United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7428

In The

United States Court of Appeals

For The Second Circuit

HOWARD C. HIRSCH, PAUL L. KOHNS and MARSHALL S. MUNDHEIM,

Plaintiffs-Appellants,

-against-

EDMOND duPONT, WALLACE C. LATOUR, MILTON A. SPEICHER, FRANCIS I. duPONT & CO., F.I. duPONT GLORE FORGAN & CO. and duPONT GLORE FORGAN INCORPORATED,

Defendants,

(Continued on Reverse)

B/S

UNITED STATES COURT OF APPEALS
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JOINT APPENDIX

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and

HASKINS & SELLS and THE NEW YORK STOCK EXCHANGE, INC.,

Defendants-Appellees.

On Appeal from an Order of the United States District Court for the Southern District of New York.

PAGINATION AS IN ORIGINAL COPY

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whether --

THE COURT: I am afraid not. It is close to 5 o'clo and I think the request is reasonable.

THE WITNESS: Except that, your Honor, I have another important meeting scheduled tomorrow morning at, I believe, 9:30.

MR. CAMHY: Mr. Bishop, any other time. It is just that I would like to know that if we need you for another five minutes we can have you, that is all.

THE COURT: All right, the point is, Mr. Bishop, you can make whatever arrangements are necessary to be here for whatever time. You will be notified.

All right.

MR. CAMHY: Thank you, your Honor.

MR. BROOKS: Your Honor, can we get some idea of Mr. Camhy's plans for tomorrow? We have gone out of order on the list he gave us of witnesses. We would like to be prepared.

MR. CAMHY: Your Honor, tomorrow should be occupied with our witnesses, Mr. Norman and Mr. Mundheim and possibly Mr. Kohns and then there is also a possibility of Mr. Garibaldi, depending on availability.

MR. BROOKS: You might call Mr. Hirsch.

MR. CAMHY: We will call him but I don't think

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it will be tomorrow.

MR. HYDE: This is the order of witnesses?

MR. CAMHY: Not necessarily. I think we will start with Mr. Norman.

THE COURT: I want to be sure we have a clear understanding with one another that I want the day and the next three days planned so that either all the testimony is taken between 10 and 5 or else whoever is not is going to rest because I am not -- we are going to have to use all the time.

MR. CAMHY: We will, your Honor.

THE COURT: I want witnesses available to testify when you are finsihed. I am saying that to all of you. I don't think you had better plan your case so well that you think you are going to call a witness on Monday and so forth, you have got to have your witnesses present and available thatyou intend to call.

One thing more on that and we can say goodnight.

I am finding it very difficult, I am using more time trying to keep up with all these documents and I think the better thing to do is to have somebody, one of your people take care of them and as you utilize them hand them up to me.

I am spending more time searching for documents,

cmbr 7

and I am getting distracted from the testimony.

MR. CAMHY: Yes, sir.

THE COURT: All right. Tomorrow morning at 10 o'clock.

MR. CAMHY: Thank you, your Honor.

THE COURT: Do you have something to say, Mr. Brooks?

MR.BROOKS: No, your Honor. I was anticipating your exit.

THE COURT: No, I amnot exiting; I have something else coming on.

(Adjourned to Friday, June 20, 1975, at 10:00 o'clock a.m.)

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HOWARD C. HIRSCH, et al.

vs. 72 Civ. 775

HASKINS & SELLS, INC., et al.

June 20, 1975
10:00 a.m.

Trial resumed.

- - -

MR. BROOKS: Your Honor, if I may before we begin, a day or so ago we reached an arrangement on the plaintiffs' response to our trial subpoena with respect to the income tax returns. I understand there is a possibility the plaintiffs will be testifying today and I would like access to such portions of those as we agreed on to be entitled to.

THE COURT: Aren't they available, Mr. Camby?

MR. SPINOGATTI: Your Honor, I submitted the tax returns of each of the plaintiffs for the years '70, '71 and '72 to Mr. McCullough.

THE COURT: Yes, but I thought that the

agreement was that on the individual tax returns that you were going to extract information from them that Mr. Brooks wanted and submit to him the partnership tax return which I think he wanted.

My only purpose in having you submit to me the individual tax returns was in order -- was so Mr. Brooks would have the assurance that what was extracted was the information he wanted.

MR. SPINOGATTI: Then I apologize, your Honor, because I misunderstood your order. I have submitted the entire tax returns to you which is what I thought you had asked us to do. I will take them back.

THE COURT: No, Mr. Camhy said,as I recall, that what Mr. Brooks said he was interested in was how they had treated the losses on the individual tax returns and Mr. Camhy said that he would extract that and that he would submit the individual tax returns to me for that purpose.

And the business about the partnership tax returns my reaction to that was that there was nothing confidential in that and they should have the partnership tax returns.

MR. SPINOGATTI: Your Honor, they already have the copies of the partnership tax returns in their

files and they also have some of the individual tax returns in the Haskins & Sells files. And I will take back the tax returns from Mr. McCullough and pull out the information, have it available for Mr.Brooks and Mr. Hyde before the plaintiffs testify.

THE COURT: All right.

MR. BROOKS: I don't know what Haskins & Sells has, your Honor, but the stock exchange has no tax returns.

THE COURT: That is all right, Mr. Brooks, you are going to get what you want.

MR. BROOKS: Thank you.

THE COURT: So I think that's it.

MR. SPINOGATTI: I will call Alexander Norman.

A L E X A N D E R N O R M A N , called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SPINOGATTI:

Q Mr. Norman, you have in front of you a copy of Plaintiffs' Exhibit 1 in evidence, which is an agreement dated July 2, 1970. Would you examine

that exhibit, please?

Are you a signatory of that agreement, sir?

A Yes, I am.

Q In what capacity did you sign that agreement?

A As a member of the Hirsch & Company liquidating committee.

Q When was the liquidating committee formed, sir?

A I think it was formed sometime in the middle part of June. Between the middle part of June and the latter part of June of 1970.

Q Are you familiar with the provisions of this agreement?

A Yes, I am.

Q Mr. Norman, I direct your attention and the attention of the Court to section 3 of the agreement. Mr. Norman, would you describe for the Court the procedures by which the assets of Hirsch & Company designated in subsection A of section 3 of the agreement, and the liabilities of Hirsch & Company designated in subsection B of section 3 of the agreement were transferred to or assumed by F. I. duPont, Glore Forgan & Company?

THE COURT: Is that set out in the agreement?

MR. SPINOGATTI: Yes, sir.

THE COURT: And what are you asking him to do?

MR. SPINOGATTI: I am asking him to describe for the Court the procedures by which the assets and liabilities designated in section 3 were transferred, your Honor. You will see that section 3 indicates that they were in fact transferred, it's a receipt for that, and Mr. Norman has testified that he was a member of the liquidating committee and that agreement provides that the liquidating committee was to do that transferring.

MR. HYDE: Your Honor, I fail to understand the relevancy of this line of inquiry.

THE COURT: I am not prepared to at this point rule on that, but what I was trying to find out was whether what he is asking him to describe is described in the agreement itself. If it's described in the agreement itself, then I can read. I don't really need any testimony.

MR. SPINOGATTI: No, your Honor, it's not described in detail in the agreement. If you would like me to respond to that objection I will. I was trying to save some time.

THE COURT: No, that's all right. I will

hear Mr. Norman if he is going to testify as to something that's not in the agreement.

MR. SPINOGATTI: Yes, your Honor.

Q Mr. Norman, would you like the question repeated to you?

A Yes, please.

MR. SPINOGATTI: Mr. Reporter, would you please read the question back.

THE COURT: I think to save you some time I think the question was as I recall it, how were the liabilities that are described in the agreement transferred.

MR. SPINOGATTI: And the assets, your Honor.

THE COURT: And the assets.

A A couple of days before the transfer of assets and liabilities which were supposed to be transferred as of July 2, 1970, an account was established on the books of Hirsch & Company called the omnibus account. This account was to be used as a conduit to transfer the assets and liabilities of duPont.

As of the close of business July 2, 1970 and the early morning hours of July 3rd based on instructions previously given, the designated assets and liabilities were transferred by the IBM computer into the omnibus

account, and then on to duPont.

Q Mr. Norman, in front of you on the table there is a large green book which has been premarked as Plaintiff's Pretrial Exhibit 260, and I ask you if this is the run of that computer which accomplished what you just described.

A Yes, it is.

MR. SPINOGATTI: Your Honor, I would note to the Court that because of the size of that document I have not provided copies to counsel for defendants. However, I advised them of its existence and it has been available for them to view.

Q Mr. Norman, did the omnibus account after the entry of all the designated assets and liabilities have a debit balance or a credit balance?

A Debit balance.

Q Do you know as you sit here what the exact amount of that debit balance was?

A I don't know the exact amount but I think it's about a million nine hundred thousand.

Q Let's see if we can refresh your recollection a little bit as to the exact amount. Would you examine the closing summary entry in Plaintiffs' Exhibit 260? I believe we marked the page with a little slip of

paper.

A Yes.

Q Does that refresh your recollection as to the exact amount of the debit balance in the omnibus account at that time?

A Yes, it's $1,910,440.82.

MR. SPINOGATTI: Your Honor, I submit Plaintiffs' Exhibit 260 be admitted in evidence.

MR. HYDE: The entire volume?

MR. SPINOGATTI: The entire volume.

MR. HYDE: Your Honor, apparently it's offered just for one figure. Why do we need this massive volume in the record?

MR. SPINOGATTI: Your Honor, this book lists all of the assets and all of the liabilities which were assumed by F. I. duPont Glore Forgan & Company. A portion of that debit balance which I have described was credited by F. I. duPont Glore Forgan & Company to each of the individual plaintiffs and forms a part of their investment. I'd like the record of all of those assets and liabilities deemed transferred by duPont Glore Forgan & Company deemed in evidence.

MR. HYDE: I have no objection to a particular figure going into evidence, your Honor, but

I do object to this volume.

THE COURT: I must confess that I have some problem with it myself merely in terms of we don't really anticipate that that's relevant enough for me to pore through that entire volume.

MR. SPINOGATTI: Your Honor, my only --

THE COURT: Let me make a suggestion to lessen some of the work. I would prefer, frankly, for you to -- whatever information is in there for you to condense it in some form and then make it part of the record. It would appear to me that if there are some figures in there that you feel are important that counsel can agree on that and without my having to try to wade through a volume like that.

MR. SPINOGATTI: Well, let me suggest this, your Honor: Would counsel for defendants stipulate that the debit balance in that account was the number which Mr. Norman read out and that that was the debit balance of the assets and liabilities transferred to F. I. duPont Glore Forgan & Company?

MR. GILLESPIE: Your Honor, I have to go look at it before I could so stipulate. I am going to have a similar problem and I see no reason why they could not Xerox that single page as I would plan to do

with these documents.

THE COURT: Yes, but he wants more than a single page, Mr. Gillespie. What he wants, he wants a summary of various accounts and at least he wants that to be before the Court for whatever reason. I think there may be some justification for that, but I think it ought to be able to be done in a way that would be less burdensome for, at least for me, I am thinking about myself at this point.

MR. SPINOGATTI: Your Honor, I will adopt Mr. Gillespie's suggestion for the time being, and perhaps if we can mark it as Plaintiffs' Exhibit 260 in evidence, the last page of this, which I will have Xeroxed and if we later on wish to --

THE COURT: Is that all you need?

MR. SPINOGATTI: For the time being it's all I need, your Honor.

THE COURT: All right, fine. We'll do it that way.

MR. SPINOGATTI: All right, fine.

THE COURT: If you determine that you want further information in it then we'll do it then.

MR. SPINOGATT: That really depends to some extent on the case of the defendants, your Honor, as you

realize.

THE COURT: All right.

MR. SPINOGATTI: In view of the suggestion I move that the last page of Plaintiff's Exhibit --

THE COURT: Well, there is no objection to that. Let's proceed.

MR.SPINOGATTI: All right, fine.

(Plaintiffs' Exhibit 260, last page, was received in evidence)

BY MR. SPINOGATTI:

Q Mr. Norman, if you can pick up Plaintiffs' Exhibit 1 in evidence once again, I direct your attention and the attention of the Court to section 5 of that agreement and in particular to subsection A.

Do you recall the dollar amount which was credited to the capital accounts of the former general and limited partners of Hirsch & Co. in the aggregate who invested in F. I. duPont Glore Forgan?

A I don't know the exact amount, but I think it's about $1,800,000.

Tlb

Q Mr. Norman, let's see if once again we can get the exact amount. Would you please examine Plaintiffs' Exhibit 254 which is not yet in evidence but which is in front of you.

Mr. Norman, do you recall receiving Plaintiffs' Exhibit 254 during the ordinary course of your business as a member of the Hirsch & Company liquidating committee?

A Yes.

Q I direct your attention and the attention of the court to schedule 2 which is the last page of that exhibit. Mr. Norman, are you looking at schedule 2?

A Yes.

Q Does that refresh your recollection as to the exact dollar amount credited to the capital accounts of the former general and limited partners of Hirsch & Company investing in F.I. duPont, Glore Forgan & Company in the aggregate?

A Yes, it does.

Q Would you tell us what that amount was please?

A $1,856,290.

MR. SPINOGATTI: Your Honor, I offer Plaintiffs' Exhibit 254 into evidence.

MR. HYDE: No objection, your Honor.

MR. GILLESPIE: Your Honor, I am not sure that he's

identified any other thing in here besides the second page of the schedule which I have no objection to. But I don't know what the rest of the exhibit includes, and whether the witness knows anything about the rest of this exhibit.

MR. SPINOGATTI: Well, he received it, Mr. Gillespie. Your Honor, if you would hold up your copy you will see that is one booklet and I would rather not cut booklets in part to submit them.

MR. GILLESPIE: One piece I have no objection, your Honor.

THE COURT: All right, it is received.

xx (Plaintiffs' Exhibit 254 received in evidence.)

Q Mr. Norman, I direct your attention to Plaintiffs' Exhibit 262 which is not yet in evidence but which is also on the table in front of you. Did you prepare that document, sir?

A Yes, I did.

Q Were you requested by F.I. duPont, Glore, Forgan & Company to advise them of the apportionment of the $1,856,290 among the former general and limited partners of Hirsch & Company who were investing in F.I. duPont, Glore, Forgan & Company?

A Yes, I did.

Q Does Plaintiffs' Exhibit 262 which is in front

mh3 Norman-direct

of you indicate that apportionment?

A Yes, it does.

Q What was the portion of the $1,856,290 which was credited to the capital account of Mr. Mundheim?

A $578,050.

Q Mr. Norman, what was the portion of the $1,856,290 credited to the capital account of Mr. Kohns?

A $472,020.

Q What was the portion of the $1,856,290 credited to the capital account of Mr. Hirsch?

A $70,950.

MR. SPINOGATTI: I offer Plaintiffs' Exhibit 262 in evidence.

MR. HYDE: Your Honor, I have no objection except that it seems to add nothing. The two figures which are relevant, three figures, have been read into the record. Here we have an exhibit which is barely legible with a lot of extraneous matter. I don't see what purpose this serves by putting in exhibits of this sort. We will stipulate to the figures. There is no dispute in the case as to the amount of credit that was given to these plaintiffs.

THE COURT: Is that satisfactory?

MR.SPINOGATTI: I will agree to that stipulation, your Honor.

THE COURT: All right, that settles it.

MR. GILLESPIE: I agree, your Honor.

THE COURT: I was about to ask. What about you, Mr. Pollack?

MR. POLLACK: We have no objection on that, your Honor.

THE COURT: All right.

xx (Plaintiffs' Exhibit 262 received in evidence.)

Q Mr. Norman, did you personally handle the administrative details of the investment by the individual plaintiffs, Mr. Mundheim, Mr. Kohns and Mr. Hirsch in F.I. duPont, Glore, Forgan & Company?

A Yes, I did.

Q In addition to the crediting of the respective capital accounts which we have just discussed, did each of the individual plaintiffs make an additional cash investment in F.I. duPont, Glore, Forgan & Company for which you handled the administrative details?

A Yes, I did.

Q Would you describe to the court the manner in which that investment was made?

A The individual partners owned a Panamanian company that was called Hirsch & Company, S.A.

Q Excuse me, Mr. Norman. All of the individual

partners of Hirsch & Co.?

A All the individual general partners.

Q Thank you, Mr. Norman, I'm sorry, go ahead.

A Just prior to July 2nd the Panamanian corporation was liquidated and a substantial portion of its assets were distributed to the general partners. Hirsch & Company, S.A. drew checks on its own bank accounts and distributed them to each of the partners, including Messrs. Kohns, Mundheim and Mr. Hirsch. Messrs. Kohns, Mundheim and Hirsch deposited their individual checks into their own bank accounts and drew checks payable to F.I. duPont, Glore, Forgan & Company for a like amount. These checks were subsequently, I believe on July 2nd or thereabouts, were delivered to F.I. duPont, Glore, Forgan.

Q Mr. Norman, I direct your attention to Plaintiffs' Exhibit 250 which is not yet in evidence but which is on that table before you. Did you receive a copy of that letter, Mr. Norman?

A Yes, I did.

Q Is that the transmittal letter used to send checks to F.I. duPont, Glore, Forgan & Co. which are the checks you just described?

A Yes, it was.

MR. SPINOGATTI: I offer Plaintiffs' Exhibit 250

in evidence.

MR. HYDE: Your Honor, we can stipulate to the three figures here. I don't think we need the checks and transmittal letter. There is no issue in the case with respect to the amounts of money that the plaintiffs invested in this firm.

MR. SPINOGATTI: Your Honor, I will then with the court's permission and the consent of counsel read the numbers into the record.

THE COURT: All right.

MR. SPINOGATTI: A check of Mr. Hirsch was for $329,050. Check of Mr. Kohns was for $427,098. And the check of Mr. Mundheim was for $321,950. In view of the stipulation, your Honor, I have no further questions of this witness.

THE COURT: Mr. Hyde.

MR. GILLESPIE: Mr. Hyde has asked me to go first, your Honor.

CROSS EXAMINATION

BY MR. GILLESPIE:

Q Mr. Norman, how long were you at Hirsch & Co. before you became a member of the Hirsch & Co. liquidation committee?

MR. SPINOGATTI: Objection, your Honor. There

is no basis in the evidence for that fact.

MR. GILLESPIE: Your Honor, I am trying to find out something about the background of the witness that they have put on the stand.

THE COURT: Well, I am going to overrule the objection. I guess at this stage you are technically correct but it seems to me it is a waste of time.

MR. SPINOGATTI: Your Honor, may I just point out one thing before we proceed further with Mr. Norman? Your Honor has had a witness rule in effect in this trial in order to abbreviate matters and make it move more ~~slowly.~~ quickly. Thus far we have only produced people on the witness stand who have been adverse witnesses. Mr. Norman is not an adverse witness. His testimony was quite limited, and I will have a continuing objection to all matters exceeding that testimony, your Honor.

MR. GILLESPIE: Your Honor, I --

MR. SPINOGATTI: Unless they want to call him as their own witness.

THE COURT: Mr. Norman was a member of the liquidating committee that handled the final transaction that dissolved Hirsch and absolved it into duPont, is that correct?

MR. SPINOGATTI: Your Honor, the liquidating

committee handled the administrative details of that transaction which have all been put into the record. I have no qualm with any questions as to that.

THE COURT: The objection is overruled.

BY MR. GILLESPIE:

Q Mr. Norman, do you have the question in your mind?

THE WITNESS: Should I answer it?

THE COURT: Yes, you may.

A 14 years.

Q What were your duties? What was your position at Hirsch & Co. during that 14-year period?

A Varied positions. I was auditor, accountant, treasurer, member of the liquidating committee, took care of the subsidiary companies.

Q Who did you report to during the time at Hirsch & Company?

A Mr. Mundheim.

Q Did that continue throughout your career at Hirsch? 14 years?

A Yes.

Q You testified earlier today when Mr. Spinogatti questioned you about a period of time some time in June prior to the actual merger when you were informed that you would have to carry out certain duties with respect

to the merger. Could you tell us the first time that you ever heard of the possibility of a merger between Hirsch & Co. and another brokerage firm?

MR. SPINOGATTI: Your Honor, objection. He said another brokerage firm at the end of his question. I think that's irrelevant. If he limits that to Francis I. duPont & Co. it is a relevant question and I will withdraw my objection.

MR. GILLESPIE: I will limit it to Francis I. duPont then, your Honor.

THE COURT: All right.

A I believe it was in January of 1970.

T2a

Q How did you come to hear of this merger?

THE COURT: You mean the prospect?

Q The prospect of the merger.

A I think it was through discussions that we had in the department. We may have discussed it with Mr. Mundheim, and I believe Garibaldi and I discussed the merger.

Q Did you at any time do any work for Hirsch & Co. in analyzing or obtaining information with respect to this potential merger with Francis I. duPont & Co.?

A No.

Q I beg your pardon?

A No.

Q Did you ever see any figures or documents on which there was financial information relating to Francis I. duPont & Co. prior to the merger date of July 2nd?

MR. SPINOGATTI: Your Honor, I object.

THE COURT: That objection is sustained. I think, Mr. Gillespie, he didn't work on the merger. You will be able to find out from someone who did.

MR. GILLESPIE: If I may, I would like to read a portion of the witness' deposition before trial because I believe his testimony at that time is contrary to what he has just stated in response to my first question.

MR. SPINOGATTI: If that's the case, Mr. Gillespie

has the obligation of reading in and impeaching the witness' testimony before proceeding on a lengthy set of questions.

MR. GILLESPIE: I am about to do so.

THE COURT: He is about to read the question and answer that he feels is inconsistent with his testimony here.

Q On pages 32 and 33 -- excuse me, pages 34. I apologize.

"Did you ever do any work for Hirsch & Co. in analyzing or obtaining information in respect to a potential merger or some arrangement with another brokerage firm?

"A No, I did not.

"Q Does that answer pertain to the merger discussions and the eventual transaction that was entered into with the duPont firm in 1970?

"A No. The only one that I had done, if you call it work, was Frank Garibaldi and I were discussing the potential merger with the duPont firm and he asked me to take a look at some figures, and I looked at them, made a cursory review, and I think I must have looked at one or two financial questionnaires. I don't remember the dates, and I think I saw an analysis of duPont subsidiaries. The accumulation of financial credits and debits. I think

it was an attempt to calculate the excess capital of the duPont subsidiaries. I think my discussions with Garibaldi were 10 or 15 minutes, something like that.

"Q Do you recall when they occurred?

"A I think some time in the spring of 1970, early part of 1970, January of 1970, in that area. It could be March or April. I am not sure.

"Q Mr. Norman, you said you looked at some figures in connection with Mr. Garibaldi's assessment of the duPont firm. Do you recall what figures you looked at?

"A I think it might have been some collations of the capital requirements, Rule 325 capital requirements of duPont's. I think I saw some special operations questionnaire, and I made a hurried review because I had other areas that were pressing to do. Mr. Garibaldi had the prime responsibility for carrying through whatever work needed to be done on the assessment of the duPont merger, whatever it was."

MR. SPINOGATTI: Have you completed --

MR. GILLESPIE: Yes.

MR. SPINOGATTI: I renew my objection. This does not establish he was asked by Hirsch & Co. to review anything in connection with this merger. He had a 15-minute discussion with a co-worker, Mr. Garibaldi, and if you read further

you will see-- and part of what Mr. Gillespie read indicates it was Mr. Garibaldi's responsibility to make this examination, and he merely asked him to look at a few figures, but he was not authorized by Hirsch & Co., as he has testified, to make this examination.

THE COURT: That wasn't Mr. Gillespie's question. Question is had he done any work on this matter, and Mr. Norman indicated he had not. Apparently he did do 15 minutes of something.

MR. GILLESPIE: I have questions with respect to those 15 minutes, your Honor.

THE COURT: Wait a minute. I think that. At least there is ambiguity, and I think in view of the reading this is proper.

Please, you have made your objection on the record. I think I have heard the objection, and it is overruled.

MR. SPINOGATTI: Very well, your Honor.

Q Mr. Norman, can you remember what documents you looked at with respect to Franics I. duPont at the time you were having this discussion with Mr. Garibaldi?

A I think the special operations questionnaires, and a financial report as of 1969, an audit report. I am not sure whether it was the final audit short form or the long form. I am not sure.

Q Do you recall any specific figures you looked at in connection with these documents? I am not asking for specific amounts, but types of figures.

A I don't recall what specific figures I looked at.

Q Maybe I can refresh your recollection, again from your deposition, page 36 --

MR. SPINOGATTI: I object to the reading of the deposition unless it is being used to impeach this witness.

MR. GILLESPIE: I am using it to refresh his recollection because he did know the fact at the time of the pre-trial deposition.

THE COURT: Continue.

Q "Q Do you recall any figures you looked at in connection with the duPont figures?

"A The AI's or the capital, or what is considered the AI figures.

"Q Anything else?

"A I remember discussing things with Garibaldi, the work he was doing, and he made a notation, and I saw it on one of the work papers:

'What about the value, stock record differences. or security differences, longs and shorts,' or something like that?"

Can you tell us what you meant by AI or capital?

MR. SPINOGATTI: I object. He has not asked the witness if this refreshes his recollection as to what he saw.

THE COURT: That's correct.

Q Excuse me. Does this refresh your recollection as to what you saw at that time?

A In a general way, yes. As I say, the discussion was so hurried and, we just pointed at things and looked at them and perhaps mentioned them in our discussion. We didn't probe them, we didn't check further into any other area or any other reports. We may have mentioned the stock record differences, that they had stock record differences.

MR. POLLACK: For the sake of the clarity of the record I would ask Mr. Gillespie read the entire answer which this witness gave.

MR. GILLESPIE: I am planning to do that.

MR. SPINOGATTI: Your Honor, I object. The purpose was to see if he could refresh the recollection of Mr. Norman as to the specific areas as he has categorized.

THE COURT: That objection is sustained. I agree with that.

Q Mr. Norman, does the reading of your deposition bring back any recollection of the notation which was mentioned by you in the deposition, the notation by Mr.

Garibaldi on documents?

A Nothing except I may have seen it and may have just raised a question outside of just seeing the notation there. That's about all I recollect about the notation.

Q Do you remember discussing with Mr. Garibaldi the specific problem of the security count differences at Francis I. duPont?

A We may have mentioned that they had security difference problems. Just about a statement like that and to that extent without going into details.

Q Did you ever form an opinion with respect to the merger with duPont?

MR. SPINOGATTI: Objection. This witness' opinions are irrelevant to this matter.

THE COURT: I think that's right, at least so far as what I know about his role. I have no basis upon which to be guided by his opinion.

MR. GILLESPIE: Let me ask some more questions and maybe you will feel his opinion has more relevance.

Q You mentioned duPont's stock record difference problem as something you talked to Mr. Garibaldi about. Were you also aware of net capital ratio and back office problems?

A In a general way, yes.

Q What do you mean in a general way? How did you come to learn anything in a general way about their back office or net capital?

A Wall Street is an area where you pick up information and there are discussions in the street that duPont has back office problems. That's about all.

Q Do yourecall, Mr. Norman, whether you saw Francis I. duPont's answers to the special financial questionnaire in early 1970?

A I don't recall whether I saw it or not, no.

MR. GILLESPIE: Your Honor, if I may turn to the deposition to see if his recollection can be refreshed, I read from page 39, line 11, Mr. Brooks questioning:

"Tell me what you did see.

"A The special questionnaire--

"Q The special financial questionnaire?

"A Which was not audited and that was prepared by duPont, internally.

"Q Do you recall the date? It was as of?

"A I don't know whether it was January or March. I don't recall the date."

Q Does that refresh your recollection of seeing a special financial questionnaire in early 1970?

A I may have, but I don't recall.

Q Are you a Certified Public Accountant, Mr. Norman?

A I am.

Q Did you ever talk to anyone besides Mr. Garibaldi about this potential merger with Francis I. du Pont & Co.?

MR. SPINOGATTI: Objection, your Honor.

THE COURT: That objection is sustained, Mr. Gillespie. That is too vague.

MR. GILLESPIE: I will make it more pertinent.

THE COURT: He could have talked to somebody on the street.

Q As a result of whatever discussions you had with Mr. Garibaldi, and whatever documents you looked at showing the financial condition of Francis I. duPont & Co., did you ever express an opinion about the merger between Francis I. duPont & Co. and Hirsch & Co. to one of the plaintiffs herein, Mr. Mundheim?

MR. SPINOGATTI: Objection, your Honor. Your Honor, this is far beyond the scope of this man's role as has been set forth from his mouth on this witness stand. If we want to poll each employee of Hirsch & Co. who expressed an opinion based on documents he saw, rumors he heard on Wall Street, I don't think that is proper, your Honor.

THE COURT: Mr. Spinogatti, you are here complaining that you were harmed and injured by virtue of the fact that information was withheld from you by both Haskins & Sells and the New York Stock Exchange. The defendants are attempting to show that maybe you had information available and went into this merger gladly and with all the facts. I think they are entitled to do that, don't you?

MR. CAMHY: Your Honor, yesterday set a rule of procedure we are trying to honor about the one-counsel rule, but I didn't think this witness was going to be examined on another whole aspect of the case except as their witness. If he is, I would ask your Honor to defer that one-counsel rule, and then if there is going to be a general examination into what Mr. Norman knew, what he was told, etc., we have no real objection to it. Sooner or later it is going to be in this case.

THE COURT: I am aware of it. That's why I think we might as well get it over now.

MR. CAMHY: Mr. Spinogatti is guarded because he is trying to protect the one-lawyer rule. He put him on for one reason and now he is into another thing.

As far as Mr. Norman is concerned, there is going to be an issue as towhat he knew or saw, whether he looked over somebody's shoulder and chipped in two cents. What he

said is in the record and we have no objection to his saying it. May I participate in terms of redirect, if we are going to go into this with Mr. Norman? If not, I will retire. But if we are going to go into the whole thing with Mr. Norman now may I be permitted to participate?

THE COURT: I will allow that. Since you were apparently caught by surprise, I will allow that deviation from the rule, although I must confess I don't see how you could have been. You should have known with the deposition this was going to be asked.

MR. CAMHY: We felt the payment of the price and crediting was a sufficiently discrete item so that it wouldn't be an occasion for going into all of this except if they called him.

Q Do you remember the question last put to you?

A Yes, I do.

Q Could you answer the question?

A Yes, I talked to Mr. Mundheim. I was negative about the merger.

Q You were negative about the merger?

A Yes. I told him that --

Q Tell us what you mean when you say you were negative about the merger?

A I didn't like the merger, and -- well, you might say I was against the merger.

Q Did you tell Mr. Mundheim why you were against the merger?

A I don't recall whether I did or not.

MR. GILLESPIE: If I may, I would like to read into the record and see if I can refresh his recollection again, and I turn to page 40 of the deposition here where it reads, line 8:

"Q Did you communicate that opinion to anyone?

"A Yes, I told Mundheim. I said 'Look, who needs this. Keep away.'

"Q Did you tell anything else in that area, did you tell him anything else in that area?

"A I may have mentioned something to him about stock record differences, something like that. I may have. I don't know."

Q Does that refresh your recollection?

A It may have, yes.

Q Just to clarify the record here, did you voice that opinion to Mr. Mundheim after seeing the documents that we have talked about already today?

MR. CAMHY: I object to that, your Honor. That's encompassing, the documents we have talked about already today. This is going to become important.

Q Did you voice that opinion after seeing the ~~specification~~ special operations questionnaire which we mentioned today and the ~~specification~~ special operations operation questionnaires which you indicated you had seen?

A I don't recall whether it was before or after.

MR. GILLESPIE: Again, your Honor, I am afraid I have to turn to the deposition where his recollection may be refreshed from page 41, line 13:

"Q Did you voice that opinion after having seen the documents that we have talked about, the special operations questionnaire and the special financial questionnaires?

"A Yes."

Q Does that refresh your recollection?

A I may have, yes.

Q Mr. Norman, did Mr. Garibaldi ever express in your presence an opinion that he had formed with respect to the advisability of this merger?

MR. CAMHY: That is inadmissible.

THE COURT: That objection is sustained.

Q Did Mr. Garibaldi ever express to you directly, did he ever tell you his opinion of the advisability of this merger?

MR. CAMHY: That is inadmissible. Mr. Garibaldi is right in this room, your Honor.

THE COURT: Let's get off that line then. Mr. Garibaldi is here. You will be able to find out from

him directly.

MR. GILLESPIE: In that case, the plaintiff will not mind our examining Mr. Garibaldi if he calls him on this point?

MR. CAMHY: I fully intend to call him, and I call him in the expectation you are going to examine him. I will have a few questions. The principal reason for bringing him here is to let you have at him.

MR. GILLESPIE: I will go on to another point.

THE COURT: The gauntlet has been flung.

Q You mentioned one discussion you had with Mr. Mundheim. Can you tell me if you remember any other conversations with Mr. Mundheim on the question of the merger with duPont?

A I probably did have, but I don't remember what the discussion was, for or against it, if that's what you are talking about. But we must have had other discussions.

Q Let me see if I can refresh your recollection. Do you remember going on vacation in the spring of 1970 to Europe?

A Yes.

Q Do you remember returning from that vacation?

A Yes.

Q To Hirsch & Company, and being asked to go with Mr. Mundheim to a meeting?

A That's right. Yes.

Q Do you remember a conversation with Mr. Mundheim while going to a meeting?

A Yes.

Q Can you tell me what was said in that conversation?

A Well, basically, I believe -- I don't know whether it's verbatim or not, I told him I was against the merger, something to the effect "Who needs this merger?"

MR. CAMHY: I am confused. Is this the same one we testified to before or a different event?

MR. GILLESPIE: This is a second conversation.

THE WITNESS: This took place before our -- this was the original --

Q This conversation you are speaking of now.

A -- conversation, that's right.

Q And then you had a second conversation with him?

A Well, after I looked at the reports. The

merger with duPont was broken up into two parts. In 1970 I went to Europe for a vacation and my conversation with Mr. Mundheim took place when I returned from my vacation, and I forgot whether it was the same day I reported to work or the next day when we went to the attorneys, I think they were duPont attorneys, where I voiced my opinion.

My previous testimony was after I had talked to Gariboldi and looked at some of the reports.

Q At the time shortly after you got back to work that you went to the meeting with Mr. Mundheim, did he say anything to you with respect to the merger?

A Something to the effect that they made better arrangements or more attractice arrangements or something.

MR. GILLESPIE: If I may, I would like to refer to the deposition again to see if I can refresh the witness' recollection.

Page 43, line 7, referring to the discussion:

"Q When did the second one occur?

"A Well, the second one, let me interject here, I was under the impression that the duPont merger was dropped.

I went away on a vacation to Europe roughly about about May 28, 1970 and I returned June 19, 1970. The dates can be verified because I asked my wife, too, when did we go to Europe in 1970. She says we have some dates on the passports. If you want dates, I can get them for you.

"When I returned to the office Garriboldi told me that the merger was on with duPont, and a short while after that Mr. Mundheim told me to put my hat and coat on because we were going to talk merger with attorneys. I am not sure of the names. I think they were the duPont attorneys.

"Q Stewart?

"A Stewart. We talked to him, and on the way over I said 'I thought the deal was off; it wasn't for us.'

"I asked him 'What happened?'

"So he told me that they sweetened the deal with putting Glore Forgan into the merger. I didn't know what Glore Forgan was and I asked Mundheim and he said, 'They are a good underwriting outfit.'

"So I said, 'Well, you are the boss.'

"He said, 'well, it made it attractive for us.'"

Q Does that refresh your recollection?

A Yes.

Q Was that the discussion as you now remember it?

MR. CAMHY: Would you read a few sentences more?

MR. GILLESPIE: I would be happy to. I thought you would object. I would be happy to.

"So I just let it go at that. I didn't make any additional reviews of any financial information. I didn't make any review of Glore Forgan's financial condition. I didn't know it. And that was the second discussion I had with Mr. Mundheim, and that was all."

MR. GILLESPIE: Is that all right?

MR. CAMHY: Yes.

Q Is that the discussion as you recollect it?

A That's right.

Q Did you or anyone else to your knowledge at Hirsch & Company make any review of Glore Forgan's financial condition during this time period?

MR. CAMHY: Your Honor, I want it made clear that whether he did or didn't, whether it was his job to do so is the assumption in the question that somehow it was his responsibility.

MR. GILLESPIE: I make no assumption.

MR. CAMHY: If it's clear did he or didn't he I have no objection.

MR. GILLESPIE: I make no such assumption.

A Just Frank Gariboldi is the only one I know.

Q He knew this?

MR. GILLESPIE: Excuse me, your Honor, I just want to get the answer clear here.

MR. CAMHY: May we have the first question re-read.

MR. GILLESPIE: Let's have the question back, and then the witness' answer.

A No, I don't know whether Frank Gariboldi examined Glore Forgan as such. I just thought you were referring to duPont.

Q No, I was limiting it to Glore Forgan.

A I don't know whether they did or not.

Q And you did not?

A I did not.

Q In your testimony on direct examination this morning you indicated that you were involved in handling the assets and liabilities that were transferred from Hirsch & Company over to duPont, is that correct?

A That's right.

Q Do you know as a result of your work on that what provision was made for the Revenue Properties contingent liability that was in the omnibus account?

A The agreement called for a reserve of 175,000 on the books of Hirsch & Company Incorporated, the underwriting subsidieary of Hirsch.

Q And that liability was transferred over to duPont?

A Not the 175,000 because I reasoned that if we were going to pay 175,000 there was some tax benefit derived out of this payment. I determined by using tax tables that approximately $88,000 would be the tax saving. I brought this to the attentino of Mr. Mundheim and he discussed it with Mr. Speicher and I believe they compromised on an amount of -- I don't know the

exact amount but it's in the vicinity of $42,000. I believe they split the 88,000 in half, and I believe the amount was reduced for a total of about 131,000, approximately.

Q As a result of that.

A As a result of that. And that was on the Hirsch & Company Incoporated books.

Q But that 131,000 would have been transferred over as a liability to duPont, is that right?

A That's right.

Q Do you know how the original figure was reached with respect to the provision for the Revenue Properties?

A I have no idea.

MR. GILLESPIE: I have one final question, your Honor, and I am finished. I mentioned that I had a similar problem to Mr. Spinogatti when he introduced his records. These are rather large volumes that have been in the plaintiffs' possession but available to us to view prior to and during the course of the trial that I would like to question the witness on, and possibly put into evidence certain portions thereof and if I could reach the same agreement on Xeroxing those --

MR. CAMHY: I just don't understand why they are being offered, and until I do I really have to make a relevancy objection.

MR. GILLESPIE: I haven't offered them yet, Mr. Camhy. If I could question on them --

MR. CAMHY: Oh, I thought they were being offered now.

MR. GILLESPIE: I am not offering them now.

MR. CAMHY: What do you propose to do, Mr. Gillespie?

MR. GILLESPIE: I propose to question the witness on them and find out what they are and when I do I will offer them, or, I may not.

MR. CAMHY: All right.

BY MR. GILLESPIE:

Q Mr. Norman, have you seen the three sets of books, or ledgers that are before you?

A Yes.

Q Can you tell me what they are?

A Monthly P&L reports of Hirsch & Company prepared under the direction of Gariboldi.

Q Are these documents part of the files of Hirsch & Company in liquidation?

A That's right.

Q As such, are they under your control as a member of the Hirsch & Co. liquidating committee?

A Yes.

Q Do you know for a fact that these are the documents, the Hirsch & Co. P&Ls on a monthly basis that were prepared by Mr. Gariboldi?

A I would say they are.

Q I would like to ask you to find one thing in one of these documents which is dated here P&L 1970 closing. If you could find me the P&L for the month, for the firm Hirsch & Co., the whole firm, for the month of April.

Now, on this document, or single sheet, we see a total profit --

MR. CAMHY: I would prefer that there not be any reading from the document.

MR. GILLESPIE: I am not reading it at this point.

MR. CAMHY: Well, you are referring to parts of the document that are not in evidence.

MR. GILLESPIE: Your Honor, then I would move to admit the profit and loss figures for Hirsch & Co. as contained in these books for the period 1969 and 1970.

MR. CAMHY: May I ask the purpose it is being offered for?

MR. GILLESPIE: Yes. Your Honor, it's our contention that we will be able to show a sharp drop of profits, and in fact a continuing and increasing loss for Hirsch & Company during the period of time leading up to the merger and we feel this was an influencing factor on the decision of the senior partners at Hirsch & Co. to go forward with the merger with Francis I. duPont & Co.

MR. CAMHY: Your Honor, I think the issue in the case is whether these parties were told or not told material facts. I don't know, the materiality of the facts that we are talking about can be judged I think on their own merits. Either those facts if they weren't told or material, either the representations which we talked about in this case about ratio and about theselongs being sold and -- either that is an important thing that would have influenced them or not, but the profitability of Hirsch & Company doesn't relate to the materiality of those facts. That is the facts in issue here are facts about duPont.

THE COURT: All right, gentlemen, sit down.

The objection is overruled. I think that obviously it seems to me that this has to be something that the defendants can put in as to one of the factors that led Hirsch & Company to take the step.

Your case is your case, but you can't narrow it to the point that you seem to want to do. I hope that we can do --

MR. GILLESPIE: I will Xerox the single pages, there are probably five or six, your Honor.

THE COURT: All right.

MR. CAMHY: Mr. Gillespie, may I make a request?

MR. GILLESPIE: Certainly.

MR. CAMHY: How many P&Ls do you have there? How many months do you have there?

MR. GILLESPIE: I have the months for 1969 and 1970, a total of 18 months. In fact, I will just do the six months of 1970 --

MR. CAMHY: I would suggest if you would as a convenience for everybody, do all 18, make a copy for each of us and then if we may just each offer that which we think --

THE COURT: All right.

MR. GILLESPIE: I have offered these into

evidence at this point and I trust they have been accepted.

THE COURT: They have.

MR. GILLESPIE: Thank you, your Honor, I have no further questions of this witness.

THE COURT: I don't know what the exhibit number is but what --

MR. GILLESPIE: Exhibit C1, your Honor.

(Defendant New York Stock Exchange Exhibit C1 was received in evidence)

MR. CAMHY: Your Honor, if I may, I just wish to kind of apologize. I think my tendency to be restrictive this way is because I am under the impression that I am putting on my case and it's coming out on cross this way and I thought this was something if they wanted to do it that way --

THE COURT: All right.

MR. CAMHY: I have no desire to constrict the Court's view in this matter.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. HYDE:

Q Mr. Norman, by whom are you presently employed?

A Hirsch & Company in liquidation.

Q Is that a full-time occupation?

A No, it's not.

Q Do you have any other employment?

A No, I do not.

Q In other words, this is your only employment.

A This is my only employment and will be for about two more weeks. After that I will be unemployed.

Q Does Hirsch & Co. in liquidation maintain an office?

A No.

Q With regard to the books and record kept?

A In Mr. ~~Cohen's~~ Kohns' private office.

Q Where is that located?

A 40 Exchange Place.

Q Is that where you perform your duties when you are performing duties on behalf of Hirsch & Co. in liquidation?

A That's right.

Q Mr. Norman, what was Mr. Mundheim's function in Hirsch & Co. specifically in the spring of 1970?

A He was in charge of all of the foreign affiliates and you might say back office partner.

Q What does that term entail, back office

partner?

A Making decisions, or helping in decisions to operate the back office, the various departments, the accounting department, the cage, margin department. Although we may have had other partners who were in direct responsibility for those particular departments.

Q Did you as Hirsch's inside auditor report to Mr. Mundheim?

A Yes.

Q Did you have occasion from time to time to discuss financial matters concerning the operations of Hirsch & Co. with Mr. Mundheim?

MR. CAMHY: I am going to object to this, your Honor. I don't know whether it has any relevancy or not. I object to it on relevancy grounds.

MR. HYDE: Your Honor, I am trying to establish Mr. Mundheim's let us say expertise in this whole area which are brokerage house financial matters. Unless, if you want to stipulate that he was knowledge-able and experienced, that he was competent --

THE COURT: Is Mr. Mundheim going to testify?

MR. CAMHY: Yes, your Honor, we are going to put all the witnesses on.

MR..HYDE: I don't knowwhat answer I will

get from Mr. Mundheim.

On his deposition, your Honor, he tried to convey the impression that he was,so to speak, a babe in the woods.

I want Mr. Norman to tell me what he thought his experience was, I want Mr. Gariboldi to do the same.

T3b MR. CAMHY: May I make a suggestion? We called Mr. Norman to prove the payment in the investment. He is now being used on what his personal opinions were and to whom they were communicated. Is he now going to be used as an expert on Mr. Mundheim's capacity? May I make a suggestion: Let Mr. Mundheim testify, Mr. Norman is not going anywhere. If after Mr. Mundheim has testified if there is any reason to think Mr. Norman can be called as an expert to give an opinion about say Mr. Mundheim's capacity which didn't come out in Mr. Mundheim's testimony Mr. Norman will be sitting right there and can come right back if the court thinks that will be helpful. But I feel that, you know, cross-examination does have its limits your Honor, and I feel it is an imposition on us to have to make us deal with this kind of thing this morning when we came prepared to deal with the thing that we did come prepared to deal with and we have Mr. Garibaldi ready.

MR. HYDE: I will be very brief, your Honor, I make that representation.

THE COURT: All right. You approach this as if you are being unduly burdened but it appears to me that these are matters that you should have anticipated. All right.

MR. HYDE: I believe there was a question pending.

THE COURT: Did you have any financial discussions

or financial matters with Mr. Mundheim. I think that was the question.

THE WITNESS: We did discuss on occasion the subsidiaries, tax matters.

Q How about the partnership, specifically such matters as the aggregate indebtedness of the partnership?

A No.

Q You never discussed that with him?

A No. That was Garibaldi's area of responsibility.

Q Page 45, last line of the deposition.

"Q In the course of your reporting to Mr. Mundheim during your career at Hirsch & Co. did you ever see Mr. Mundheim compute a capital computation for the firm of Hirsch & Co.?

"A I don't recall whether I have seen him calculate it. I know he has asked questions, leading questions, inquisitive in nature, like

What is the significance of this figure, of that figure, what would happen if this went up and this came down, and what do we do to increase the AI, and what causes it to increase."

AI in your testimony referred to aggregate indebtedness, did it not?

A That's right.

Q Does that question and answer refresh your recollection that Mr. Mundheim did discuss matters such as aggregate indebtedness with you?

A Very infrequently, yes.

Q On those infrequent occasions when he did discuss such matters with you did you find him to be knowledgeable and experienced in such matters in the sense that he could ask an intelligent question?

A I would say so, yes.

Q Mr. Norman, where did you work prior to going with Hirsch & Co., and if you could give us some dates it might be helpful.

A Haskins & Sells. I worked for them approximately eight years, nine years.

Q Do you recall when you left there to go with Hirsch & Co.?

A I think in 1956, summertime of '56.

Q Was a substantial proportion of your work at Haskins & Sells devoted to brokerage house audits?

A Total part of my work at Haskins & Sells, yes.

Q Including among that work was audits of Francis I. duPont, wasn't it?

A Yes.

Q Was Mr. Garibaldi also at Haskins & Sells at that

time?

A Yes.

Q And did he work on audits of Francis I. duPont with you?

A This is many years ago, yes. When we first started working.

Q Do you still have Plaintiffs' Exhibit 254 before you? It was one of the ones which you identified on your direct testimony. Do you have it, sir?

A Yes.

Q I believe you referred to schedule 2, the last page of that exhibit.

A That's right.

Q That indicates I believe according to your testimony that the partners of Hirsch & Co. contributed some $4,491,000 in capital to the firm of F.I. duPont, Glore, Forgan & Co.?

A That's right.

Q Now what I would like to ask you is whether or not you are aware of the charges to net capital which the firm of Hirsch & Co. brought over into duPont, Glore, Forgan by reason of the merger.

A What do you mean what charges?

Q Well, let me ask you this: Are you familiar with

this Rule 325?

A Yes.

Q There are certain charges provided for in Rule 325 which must be deducted from net capital, are there not?

A Well, whether that's -- whether all of Rule 325 is applicable to a merger or not I don't know. There are some --

Q No, my question is not that. I am afraid you may be misunderstanding me, Mr. Normal. I am not talking about the applicability of it to a merger. My question is this: You are familiar with the charges to net capital which are provided for in Rule 325?

A Yes.

Q Let me put it this way: Do you know whether or not the charges that were carried over from the one firm into the other were greater or less than the four million four in capital that was carried over from the one firm into the other?

MR. CAMHY: Your Honor, I object, first because I really don't understand the question and secondly because to the extent that I do have an understanding of the question I seem to be in Mr. Mundheim's position which is that I just didn't think that this computation

was used in relation to Rule 325. But I had better just sit down until I understand the question.

THE COURT: All right. I don't understand the question either, Mr. Hyde, so the objection is sustained.

Q Do you know, Mr. Norman, whether or not the acquisition of Hirsch's assets and liabilities, together with the capital contributed by the Hirsch partners had a positive or negative effect upon duPont's capital position?

MR. CAMHY: May I hear that reread please, your Honor? I heard it but I would like to hear it again. I mean it is not that I didn't hear it, I did hear it but--

THE COURT: Would you read it back.

(Read)

MR. CAMHY: Are we talking about percentage ratio?

MR. HYDE: If the witness wishes to --

MR. CAMHY: Or are we talking about absolute dollar --

MR. HYDE: I am asking the witness. He may be able to express it in one form or another.

BY MR. HYDE:

Q Did it improve the ratio?

A I wouldn't have any way of knowing. I didn't calculate it.

Q Is that also true in the dollar terms that you know, whether it improved the ratio in dollar terms?

MR. CAMHY: No, the ratio is not improved in dollar terms, Mr. Hyde. Dollars simply aggregate and you have so much capital. Now if the question is did the aggregate capital of duPont plus Hirsch exceed the aggregate capital of duPont, is that the question?

Q Did it improve the aggregate capital of duPont.

MR. CAMHY: I don't know what improved means, your Honor.

A I didn't calculate it so I don't know.

Q Mr. Norman, what were the financial results of the partnership Hirsch & Co. for the year 1969? Was it making money, or was it losing money?

MR. CAMHY: Your Honor, there are now records in evidence.

THE COURT: They have just been introduced by Mr. Gillespie, I think profit and loss figures --

MR. CAMHY: Yes, that's my impression, your Honor.

THE COURT: So we don't have to go into that.

Q Are you familiar with the tax returns filed by the partnership,Mr. Norman?

A Yes, I am.

MR. HYDE: Well, I will offer, to supplement

Mr. Gillespie's peace offer, the partnership tax returns for the years 1969 and 1970. I assume there is no question as to authenticity or I can --

MR. CAMHY: They came from your files, Mr. Hyde, they have to be authentic.

MR. HYDE: Any objection?

MR. CAMHY: No objection to authenticity. I will reserve my position on relevancy. Are they being offered in evidence?

MR. HYDE: Yes.

MR.CAMHY: Oh, your Honor, I want to know why they are being offered. What parts of them are being offered and what they are being offered for.

MR. HYDE: Do you wish to hear argument, your Honor? I thought this had already been ruled upon.

THE COURT: Well, the point is it does appear to me, gentlemen, I gather that you are offering them to show the position of the firm just prior to the merger, is that correct?

MR. HYDE: Yes, your Honor, for the 18 months prior to the merger.

THE COURT: Well, it would appear to me that we ought to be able to get this clear in terms of the stipulation as to what that position is if you want it in

dollars and cents. I really don't see any necessity for these being in evidence since I would think that's clear.

MR. HYDE: Your Honor, the tax returns contain one element that is not in the financial statements, I don't believe and that is the breakdown of the losses as between the three plaintiffs. We propose to show that these three plaintiffs in their capacity as general partners of Hirsch & Co. were suffering catastrophic losses during this period, their capital was being --

THE COURT: All right.

MR. GILLESPIE: Your Honor, I would like to say three words that I think would clarify the situation.I am not sure that the total loss figure that appears in those partnership returns will match up the total loss figure for the year. we had here and secondly I believe those are already in evidence as Haskins Exhibits Q and R. If we could check I think that might solve the problem.

MR. CAMHY: Are they in?

MR. SPINOGATTI: Yes.

THE COURT: I don't think they are in but I don't have any -- I think you are entitled to have them in. I am trying to ease the burden of this record, that's all.

MR. HYDE: Well certainly extract the relevant

portions then, your Honor.

THE COURT: I would appreciate that.

MR. HYDE: I have no further questions.

THE COURT: Mr. Singer, Mr.Pollack, any questions?

MR. POLLACK: We have no questions of this witness at this time, your Honor.

THE COURT: All right, why don't we take our recess now for ten minutes.

(Recess)

T4A

REDIRECT EXAMINATION

BY MR. CAMHY:

Q Mr. Norman, were you aware during that spring of 1970 that Mr. Garibaldi was asked in the earlier part of the, February, to make an inquiry and get some facts and figures on duPont because they were considering the possibility of a merger?

A I may have. I don't remember specifically.

Q He was the one who was asked?

A Yes.

Q You weren't asked to do that?

A I was not asked, no.

Q Is his place of work near yours?

A Yes.

Q Did you have a habit of talking to each other??

A Yes.

Q Did your initial contact with this come from your talking to him about it because he happened to be sitting there?

A Yes, that's right.

Q But you don't recall anybody asking you to get these facts or figures?

A Nobody asked me to get those figures, no.

Q When you did see any of Mr. Garibaldi's, what he

was able to assemble, did you ever see what I will show you now, which is Exhibit 109, a capital computation as at the audit date?

A No.

Q Were you aware that duPont had been computed as at 3,200 per cent ratio on its last audit date?

A No, I was not aware of it.

Q When did you first become aware of it?

A I think just possibly the last couple of days, a week.

Q Did it come as a surprise to you?

A Yes.

Q Do you remember what you said when you were told it?

MR. HYDE: Objection, your Honor.

THE COURT: Objection sustained.

Q Did Mr. Garibaldi's papers have anything like that in them, Exhibit 109?

MR. HYDE: Objection, your Honor.

Q The ones you saw.

THE COURT: The objection is overruled.

Q This 109, did you see this, the 3,200 computation?

A No, sir, I did not.

Q I show you Exhibit 112 which is the material inadequacies letter of November 26, 1969. Was that among

any papers you saw in Mr. Garibaldi's file?

A I don't think so.

Q Were you then aware that Haskins & Sells had written a material inadequacies letter on this company?

A No, I was not aware of that.

Q Did you know at that time that Haskins had given a clean certificate on the last audit balance sheet, the simple balance sheet?

A No, I was not.

Q Had you seen the audited balance sheet?

A (No response)

Q Let me show it to you.

This one has been cut in half, but I show you Exhibit 247. Did you see this balance sheet in its original form as a booklet?

A Not prior to the merger, no.

Q How about the printed version of it? You have to recall that this is a yellow card, it bends over.

A I may have seen this.

Q It is a printed brochure?

A I don't recall whether I saw this. I may have.

Q Did you know anything that qualified the audit opinion given on the last audit by Haskins & Sells?

MR. HYDE: I object to the form of the question.

THE COURT: I don't understand the question.

Q So as far as you know, had Haskins & Sells given the standard audit opinion on the last audit?

MR. HYDE: The witness testifies he can't remember having seen it, and there it is before him..

A This is a standard opinion made by Haskins & Sells on a surprise audit.

Q That's right. At that time did anybody ever inform you that there had been anything but a standard audit opinion on the last audit?

A I don't think they had, no.

Q In your discussion of some special operations questionnaires, did anybody ever inform you that there had been some other securities differences, longs, which had been sold and the proceeds used to aid capital and net worth?

A No.

Q Did anybody tell you that approximately six million dollars worth of Rule 325 capital had been infused into the company through the sale of securities which were in long difference accounts?

MR. HYDE: I object to this testimony. This is not one of the plaintiffs. He testified that he was against the merger. I don't see why we need go further.

He gave the reasons why he was against the merger, the facts that he was aware of.

THE COURT: You may be right, but I am not conducting Mr. Camhy's case. You opened it up. The objection is overruled.

Q Did you know that some six million dollars in securities in long difference accounts had been infused into the capital of the company for Rule 325 purposes?

A No.

Q When you were considering this question of whether this merger was a good thing or not, were you considering it about your own future -- that is, as a member or an employee of Hirsch & Company?

A Yes, I was. If there was going to be a merger, I would have liked to go along with the merger. And for selfish reasons if not for anything else. I contributed to the new firm as a subordinated lender, more or less to protect my job.

Q Is that the reason you voiced your opinion because you personally felt it was not a good thing and you wanted to influence the others not to do it because you thought it was not a good thing?

A Well, I don't think I was trying to influence anyone. I was just voicing an opinion that I didn't like the

merger. The decision to put up subordinated capital was made after I voiced my opinion. When I saw that the merger was going through anyway, I contributed capital, subordinated capital, to protect my job.

Q How much approximately did you contribute?

A $10,000.

Q Was that a substantial portion of your savings?

A Yes, it was.

MR. CAMHY: That is all I have, your Honor.

MR. GILLESPIE: I have some recross.

RECROSS EXAMINATION

BY MR. GILLESPIE:

Q Mr. Norman, I was a little confused by your response to Mr. Camhy's question on subordinated capital, when you mentioned the $10,000 figure. Where did that go? Did you in fact subordinate $10,000?

A Yes.

Q To F.I. duPont?

A Glore, Forgan, that's right.

Q Mr. Camhy, on redirect, showed you two exhibits, Exhibits 112, which was a material inadequacies letter, and 109, which was a capital computation. Were you aware that capital computations and material inadequacy letters were prepared for Hirsch & Company by Haskins & Sells?

A Yes.

Q As a matter of course?

A Yes.

MR. CAMHY: Is that represented as a fact, that such letters exist?

MR. GILLESPIE: No, I asked the question, and he responded to it. It stands for what it says. Do you want him to read it back?

THE WITNESS: Was there a -- I believe the question --

MR. GILLESPIE: If there is no objection I will go on, your Honor.

MR. CAMHY: I would like to hear the question and the answer, and let the witness hear it.

THE COURT: It is very simple. Did he know that Haskins & Sells had prepared --

MR. GILLESPIE: Material inadequacy and capital computations.

THE COURT: For Hirsch & Company, and he said yes. Proceed.

Q Were you offered a job with the merged firm?

THE COURT: Really, Mr. Gillespie, I don't see the relevance of this area. Granted, it was brought out but I don't see any relevance to this case.

MR. GILLESPIE: The relevance I can show in a moment is Mr. Norman made a decision not to join the merged firm because he was unable to tell the extent and degree of security count differences, and that was the reason he decided not to go along with the merged firm, and I think I can show that with this line of questioning.

THE COURT: You mean that rather than, as has been suggested on the redirect, is that your point?

MR. GILLESPIE: Yes, sir. May I go forward?

THE COURT: Yes.

MR. GILLESPIE: May I have the question?

(Question read)

A Yes.

Q Can you tell me why you did not take that job?

A I did.

Q Was one of the reasons you did not take the job because of the security --

THE COURT: He said he did.

THE WITNESS: I did.

Q You took the job?

A Yes.

Q Excuse me. Let me go and ask you with respect to the merger and your opinion of the merger. I think the question that was put on redirect related to your opinion

of the merger, and I ask you now if one of the reasons you did not approve of the merger was because of your lack of knowledge of the extent and degree of the security count differences that existed in Francis I.duPont & Co. prior to the merger?

MR. CAMHY: I object to the form of the question. I would have no objection if the question was rephrased.

When you talk about security count differences, if you talk about those he knew of, I would have no objection.

Q Were the security count differences that you knew of, or the fact you thought there might be some more you didn't know of, the reason you reached the opinion you did with respect to the merger?

A I formed my opinion regarding the merger based on a, I might say a visceral feeling that I had about the duPont organization. In spite of this feeling that I had I went along with the merger by investing my own personal funds as a subordinated lender.

Q You mentioned a visceral feeling. I guess what I am trying to find out is if the basis of this was your concern about the security count differences that existed at Francis I. duPont, or one of the bases.

A At that time, no.

MR. GILLESPIE: Your Honor, if I may read one

question of the deposition I will be finished. It will clarify the contradictory evidence here.

THE COURT: All right.

MR. GILLESPIE: Page 36, midway down the page. Answer line 13:

"I remember talking about this problem" -- the problem referred to are security differences, longs and shorts -- "I remember talking about this problem briefly, that it might be an area of problem with duPont, not knowing what the differences were. We had discussed briefly the situation at duPont because there was a lot of feedback if you want to call it that, about the back office conditions that duPont had and we talked about it. We questioned the extent of the evaluation of the security differences which I don't think was recorded on any of the financial data that we had I don't recall seeing them. Which was one of the reasons why I didn't go along with or approve of the merger with duPont."

Q Does that refresh your recollection as to that being one of the reasons?

MR. CAMHY: Mr. Gillespie, in earlier portions of this deposition, immediately preceding, was the time of this fixed?

MR. GILLESPIE: It is certainly fixed to the spring

of 1970, Mr. Camhy.

MR. CAMHY: The problem, your Honor, in taking the witness this way, is this thing was in two sessions, one early before a break, and then there was an interruption.

THE COURT: But, Mr. Camhy, you can clarify that by asking him questions you want. Let's proceed.

Q Mr. Norman, you testified to begin with that you were a member of the liquidating committee of Hirsch & Co.

A That's right.

Q Who were the other members of that committee at this time?

A Mr. Mundheim, Mr. Kohns, Mr. ~~Fremen~~ Freiman, Mr. Spector, Gilbert Bach.

Q Can you tell me how decisions of that liquidating committee are made?

A I have no idea.

Q You were not involved in the decisions?

A You asked for the present constitution?

Q Yes.

A I don't know. I don't attend the meetings.

MR. GILLESPIE: That is all I have.

REDIRECT EXAMINATION

BY MR. CAMHY:

Q When you say you don't attend the meetings, do you mean at the present time?

A At the present time, since some time in 1974.

Q Mr. Norman, do you recall that the duPont merger was almost in two sections during that spring?

THE COURT: We already have that in the record.

A Yes.

THE COURT: Direct his attention to the statement and find out when it was, and let's get it over with.

Q Do you recall which of those sessions it was that this statement attributed to you that you think it was, the early part or the latter part?

A I don't know.

THE COURT: You don't recall?

THE WITNESS: I don't recall.

RECROSS EXAMINATION

BY MR. SINGER:

Q Mr. Norman, there is no question in your recollection that you told Mr. Mundheim "Stay away from the merger"?

A That's right. Yes.

Q You told him that?

A Yes.

Q Did Mr. Mundheim ever tell you that Mr. Garibaldi

had voiced the same opinion to him?

MR. CAMHY: What was the question?

THE COURT: Did Mr. Mundheim tell him that Mr. Garibaldi had opposed the merger as well.

MR. CAMHY: It is triple hearsay, but I suppose if it came out of Mr. Mundheim's mouth I have no objection.

A I think he did, yes.

Q He did, didn't he?

A Yes.

MR. SINGER: I have no other questions, your Honor.

THE COURT: All right. Thank you, Mr. Norman. ou may step down.

(Witness excused)

THE COURT: Next witness, Mr. Camhy.

MR. CAMHY: Mr. Gariboldi, please.

4B

F R A N K G A R I B O L D I , called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CAMHY:

Q Mr. Gariboldi, would you tell us what your present employment is?

A I am presently employed with Paine, Webber, Jackson & Curtis.

Q How long have you been in the securities industry?

A Since 1960.

Q '60?

A '60.

Q Were you with Hirsch & Company during the early part of 1970?

A Yes.

Q What was your position?

A Controller.

Q Can you tell me what those duties entailed

A It included running of the accounting department, preparation of all financial questionnaires, capital computation, coordinating the accounting department with the back office, and assisting Mr. Kohns

in financial matters.

Q Did a time come when Mr. Kohns and Mr. Mundheim, or one of the partners at Hirsch & Company, asked you to collect some information and facts on duPont with a view to possible merger?

A Yes.

Q Did you do that?

A Yes.

Q Did you do that?

A Yes.

Q Did you endeavor to report those facts insofar as you could find them to the partners at Hirsch & Company?

A To Mr. Kohns and Mr. Mundheim, yes.

Q Did you furnish them with your opinions on the merger?

A I put nothing in writing. Just oral discussions with Mr. Kohns.

Q In your oral discussions did you give your own opinion as to whether you thought the merger was good or bad?

A Not specifically I didn't say it was good or bad. I don't remember making that definite statement.

Q But you do recall there were a number of negative facts you brought to their attention?

A I brought facts to them. Whether it was negative or not, someone would have to make a judgment decision on that.

Q In connection with your work in this regard did you ever see or were you shown this Exhibit 109, which is a capital computation prepared by Haskins & Sells as at the last audit date?

A No.

Q Do you notice the ratio shown on that computation as of the audit date?

A Yes.

Q Were you aware that duPont had been computed as having that ratio by the auditors on its last audit, 3200?

A No.

Q Were you ever made aware of the fact that the exchange had made recomputations of this audit date status in reference to rule 325, and had come up with a ratio in the tens of thousands, 76,000?

A No.

Q Were you ever made aware by the exchange's computation the capital deficiency on the audit date was

approximately 17 million?

A No.

Q Were you ever made aware that during the period December and January approximately $6 million worth of securities in the long differences accounts od duPont were sold and used to replenish capital?

A No.

Q Were you ever shown this material inadequacies letter, which is Exhibit 112?

(Handing to witness)

A No.

Q Were you ever made aware that a material inadequacies letter had been written as at the last audit date for duPont?

A No.

Q You did know, however, that there were substantial differences which indicated a back office problem, is that right?

A Yes. In answer to the question 13 of the questionnaire, it listed the securities differences.

Q Weren't there approximately 10 million short securities differences and 10 million long on the more recent questionnaires in the spring of 1970?

A I don't remember the amount, but the figures

appear to be approximately correct.

Q Didn't you call the partners of Hirsch & Company's attention to that 10 million short?

A Yes.

Q And didn't you tell them that that could be a problem?

A Yes.

Q Wasn't there some discussion, indeed, I think even with Mr. Lill present, as to if there were any way the partners could be sure as between them and the duPont partners they could make the duPont partners bear the burden of those?

A I don't know whether Mr. Lill was present, but there was a discussion whether they could limit their liabilities.

Q At that time did anybody ever tell them there had been 6 million longs that were sold that might come back?

A Not that I know of.

Q In connection with your work on this job, did you have occasion to at least discuss this matter with Mr. Petrillo?

THE COURT: Who is he?

MR. CAMHY: The partner of Haskins & Sells

who was the partner responsible for the 1969 audit, although Mr. Lill worked under him.

THE COURT: I remember now.

Q Can you tell us, did Mr. Petrillo have any connection with Hirsch & Company?

A Yes.

Q Tell me what that connection was?

A Haskins & Sells were the auditors for Hirsch & Company, and Mr. Petrillo was, I would say, the senior partner representing Haskins & Sells on the audit.

Q In the course of your work did you have occasion to communicate with, not just on this job but generally as controller, did you have occasion to be in communication with Haskins & Sells?

A Yes.

Q Did you seek their advice from time to time on various matters such as treatment of different items in Hirsch's work?

A Yes.

Q Did they do the tax returns for the partnership?

A I don't know. That was under ~~all~~ A1 Norman's specification.

MR. CAMHY: Your Honor, may -- well, the tax returns, I think Mr. Hyde has said they are in Haskins' files.

Q Did you have occasion in this work to see either Mr. Petrillo or some other representative of Haskins & Sells on the Hirsch premises from time to time as yo u worked as controller?

A Yes.

Q When the time came for this merger, did you talk to Mr. Petrillo on one or more occasions in relation to it?

A Yes.

Q On any of those occasions, did Mr. Petrillo ever point out to you these things I talked about, about a 3000 ratio computed by Haskins or a 70,000 ratio computed by the exchange, or a 17,000 capital deficiency?

A Not --

MR. HYDE: There is no evidence Mr. Petrillo was aware in any way of the exchange's computation.

THE COURT: The objection is overruled. I don't know whether he was aware of it or not. He hasn't been questioned.

MR. HYDE: It assumes a fact not in evidence, your Honor.

THE COURT: The objection is overruled.

Q Did anybody else at Haskins & Sells ever call those things to your attention?

A No.

Q Did you ever call any of those things to the attention of the Hirsch partners? I mean, that's a rhetorical question, Mr. Gariboldi.

A I didn't know about it so I couldn't bring it to their attention.

MR. CAMHY: That's all I have of this witness.

THE COURT: Mr. Camhy, I really don't want to take over and inject myself, but I think I am going to want to know precisely what it was that Mr. Gariboldi did. It seems to me that if you are not going to ask it and get it out from him I will have to ask it myself, or I will get it in another form from the defendants.

MR. CAMHY: What he told them.

THE COURT: No, I would like to know what he did. As I understand his role, it seems to me he was a critical person. He was in charge of making an

investigation. I want to find out what he did. You haven't asked him that.

MR. CAMHY: All right.

Your Honor, I had assumed all of this was going to be brought out on cross-examination. I brought him here for that purpose.

THE COURT: I am sure it is, but the point is I want it in a framework that I will get affirmatively precisely what he did do.

MR. CAMHY: All right.

Q Mr. Gariboldi, would you tell the Court, and try if you can to put it -- if you still can -- in a chronological frame to this two-part negotiation that they had -- would you tell the Court what your activities were in carrying out this assignment of getting facts and relaying facts to the Hirsch partners about this merger, and to the best of your ability tell the Court what instruments and calculations you did look at, and what recollection you have of them.

A In the early part of 1970, January, February, Mr. Mundheim, Mr. Kohns, called me in and said they were contemplating a merger, or they were having a discussion with duPont, and would I look at some financial documantation.

They left that entirely up to me, I could make whatever decisions I wanted. They did not restrict me into the type of documents that I would look at. I told Mr. Mundheim, Mr. Kohns, that I needed certain information, the long form special operation questionnaire, balance sheets, and Mr. Mundheim would get that information for me.

At the time we were dealing with Mr. Gentile, Mr. Mundheim would relate my questions to Mr. Gentile, and then the information would come back to Mr. Kohns and Mr. Mundheim, would be given to me to look at.

THE COURT: Now, excuse me. Mr. Gentile was the controller.

THE WITNESS: Controller of duPont.

A I did not deal directly with duPont. Mr. Mundheim would get me the information that I requested. There were times I would get the information directly from Mr. Mundheim, Mr. Kohns, or Mr. Gentile on two or three occasions he delivered it to me in my office.

I analyzed the special operations questionnaire, and had a number of questions based on my review.

THE COURT: So I can be clear about this, what exhibit number is that?

MR. CAMHY: We'll have to pull them out because I think I am going to try to show -- I had assumed they would do it. Now, I will pull them out and pull systems, I think they saw --

THE COURT: But they are not in evidence.

MR. CAMHY: They all are, but we have to you know --

MR. BROOKS: They are not in evidence, your Honor.

THE COURT: That's what I was asking.

MR. BROOKS: Yes, I think the answer to the question is no.

MR. CAMHY: They are not? The long form audit?

MR. BROOKS: I thought you meant the things he did like the work sheets.

MR. CAMHY: No, his work sheets are not in evidence. The things he saw are in evidence.

THE COURT: Well, what I want to know is what exhibit numbers you are referring to so it will help me out. The special --

THE WITNESS: The special operations

questionnaire.

THE COURT: What number is that?

MR. CAMHY: Your Honor, I can't think of it.

THE COURT: All right.

MR. CAMHY: May I be permitted, perhaps it will help. There was on September 28 audit a long form spread sheet which is in, as the Haskins & Sells audit. Then there are these special forms, I think I had Mr. Gay looking at some printed forms with entries in them. Those are the special operations questionnaires.

THE COURT: All right.

MR. CAMHY: Then there was one special operations questionnaire which was a January 30 one which was arranged like the old long form one.

THE COURT: I see.

All right, thank you. I am sorry, Mr. --

MR. CAMHY: Now, your Honor, I am ~~cable~~ capable of dealing on this examination with those questionnaires but not with his work sheets. I didn't, you know, prepare this that way.

THE COURT: All right. I was just interested in being sure I understood what forms he was referring to.

Q So then you saw these special operations questionnaires, did you not?

A I saw some of them. Which ones, you know, whatever you had admitted into evidence I will look at. I don't remember whether I saw February or March or at what time I saw them. Unless there is some notation on there that -- you took them out of my work papers. Basically that's what I was looking at, the financial questionnaire, the special operations questionnaire, the long form.

Q All right. Did you also see the standard long annual report for the year end '69, which we found in your folder? This is a Xerox of it but the brochure was found in your folder (handing) with the balance sheet in the center. This is spread over two pages.

A Yes, I have looked at some financial statements.

Q Well, my question is, did you have any reason to think that Haskins & Sells had issued anything but a simple unqualified opinion for the balance sheet as at the last audit?

A I looked at the long form, the certificate was not qualified but they had listed the security differences in the answers to the questions.

Q All right.

THE COURT: Well, would you allow him to continue to tell me what you did in your investigation, Mr. Gariboldi?

THE WITNESS: Yes. I looked at all these documents and I made comparisons between the financial questionnaire of September, the year end, the financial questionnaires and the operational questionnaires at a later date and tried to pick up major fluctuations from period to period. And I had questions as to the differences, what happened between the audit time and the present time, tried to relate the differences.

I tried to look at the changes in the inadmissible assets such as furniture and fixtures and other capital charges that I might have had at September which I did not have in January, February or March. So to try to get a transition from the audit time to the current time. My concern was basically the current financial position of duPont, not what happened six months ago. But it did have a bearing if there was any material changes in the figures.

And I think my work papers indicate that I did make such comparison.

THE COURT: And based upon these facts that you found worked up you worked out an analysis of the

duPont firm is that --

THE WITNESS: When I had their capital computation and the thing that was in question were the security differences. The special operations questionnaire indicated that security differences were not taken in the computation of the capital, rule 325. So the question was if they were, what would be the capital ratio, why were they being eliminated, were they given special treatment by the New York Stock Exchange. That was the question that had to be answered.

MR. CAMHY: Your Honor, I don't think I am capable of carrying this very much further because I will pull a lot of exhibits out.

THE COURT: All right.

MR. CAMHY: Your witness.

THE COURT: Mr. Hyde, you have decided you are going to be up first now.

MR. HYDE: We are trying to divide it up, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. HYDE:

Q Mr. Gariboldi, could you tell us a little about your background?

A From 1948 to 1960 I was with Haskins & Sells. From April 1960 to July 1970 I was with Hirsch & Company.

From April 1960 to July 1970 I was with Hirsch & Company.

From August 1973 with Walston, or duPont Walston, and from 19 -- August 1974 to the present with Paine, Webber,Jackson & Curtis.

Q When you say duPont Walston, that is a firm that came into existence sometime --

A Let me just go back to 1970.

Q Yes.

A In 1970 I was with Walston & Company.

Q Excuse me. You did not go with duPont Glore Forgan?

A No.

Q Never with that firm I take it?

A No, sir.

Q All right.

A In 1970 I went over to Walston & Company and when Walston and duPont realligned their business I went back as an employee of duPont Glore Forgan, and then when Walston went into bankruptcy I moved back into Walston and put the firm into bankruptcy as the comptroller of Walston & Company, duPont Walston at the time of the

bankruptcy proceedings.

Q Now you are, I believe you said, with Paine Webber?

A Yes.

Q Going back to the time you were with Haskins & Sells did your work consist in large part of brokerage house auditing?

A The latter part of my experience, yes.

Q And you worked there with Mr. Norman, did you not?

A Yes.

Q And the two of you I believe even worked on audits of the old Francis I. duPont firm?

A I was on duPont I think only once as a junior, going back a good number of years.

Q When you went with Hirsch, what were your duties?

A I was the controller and the duties that I mentioned before I just carried right through from 1960 through 1970.

Q Mr. Gariboldi, you are familiar, I take it, with what a surprise audit is?

A Yes, sir.

Q Could you tell us what reports the auditors

are required to file in connection with a surprise audit?

MR. CAMHY: I want the time fixed, your Honor. I think these things have changed from time to time as I understand it.

Q 1969, 1970.

MR. CAMHY: 1969?

MR. HYDE: And 1970.

A Can you be more specific?

Q Well, you mentioned a long form. What is that?

A A long form questionnaire is normally -- is in three parts.

Q Yes.

A The first part is the answers to the financial information, that is the assets, the liabilities. It has underwriting commitments, contractual commitments. It has footnotes. Part 2 normally would show the security, the detail of the security valuation in inventory, partly secured account. And Part 3 normally would show the information as far as Rule 325 is concerned as far as cash required to margin accounts and capital borrowings of the partners.

Q Is it fair to say Part 3 is the backup to the net capital computation?

A It has additional information that is required.

Q Just for the record I would like to show you Plaintiffs' Exhibit 26 and ask you if that is the Part 1 of Haskins & Sells long form questionnaire for 1969 with respect to Francis I. duPont (handing).

A Well, this is not what I saw. I had it in a blue back.

Q You had the whole thing, Part 1, Part 2, and Part 3?

A I don't know if I had Part 3 but this appears to be the certificate.

Q And is that the contents of Part 1?

A Yes.

Q And in addition you saw, you are sure, Part 2?

A Yes.

Q And you may have seen Part 3?

A I may have.

Q Do you know whether or not in addition to the financial questionnaire a memorandum computation of net capital was required to be filed in 1969 and 1970 by the auditors as part of their surprise audit?

A Are you asking me five yeears ago or what I know now? You know at that time I didn't remember whether they had a file but I have since learned that the rules be in effect since 1968. I don't remember whether Haskins & Sells physically filed.

We did end up with a capital computation from Haskins & Sells, we, Hirsch & Company did.

Q Well, apart from the filing you knew that the auditors prepared a computation of net capital,did you not?

A Well, there was a period of time they were not preparing it, you know. I am talking about 1960. Somewhere along the line the requirements had changed, whether it was 1968, '69 or '70 I --

Q Well, whatever your present recollection is, is there any doubt in your mind that in 1970 you knew what

the requirements were?

MR. CAMHY: I don't understand -- I object, your Honor, to the form of the question. I don't understand it.

THE COURT: I thought I understood the question. Reread the question.

(Read.)

Q In other words, Mr. Gariboldi, in 1970 you knew what requirements were then in effect with respect to the component parts of an audit, did you not?

A I can't remember if they had to file those at that time, you know. A difference of one year to another year, whether 1970 was the date that they had to file these, the capital computation and the material inadequacy form. It is around that time that the rule went into effect that they had to file that information.

Q Well, let me put it this way: Whenever the rule went into effect you were aware of the rule, were you not?

A Yes, sir.

Q When you were given the task of investigating Francis I duPont's financial condition in connection with a proposed merger with Hirsch & Co. could you tell us what documents you considered appropriate to such an investigation?

MR. CAMHY: Your Honor, I don't know that it is relevant what documents he considered appropriate.

The issue seems to be what he saw.

THE COURT: Well, as I understood his testimony, he asked for specific documents and those documents were supplied.

I think the answer is already in but obviously Mr. Hyde can ask him on cross examination. In other words, the objection is overruled.

T5B

MR. HYDE: Let me rephrase the question then, your Honor. I think it probably already is in.

Q I believe you testified with respect to the documents that you asked for. Let me ask you this: Did you ever ask for any documents that you did not receive?

A No, I received every document that I asked for. Whether I got them a day later or a week later but I received the documents that I asked for.

Q You got them.

A Yes, sir.

Q Now was there any document that you considered necessary and appropriate to the evaluation of the financial condition of Francis I.duPont which you did not ask for?

A I would say no.

Q Everything in other words, that you thought you needed you asked for it and you got it, is that correct?

A That's correct.

Q I think you testified with respect to seeing certain special operations questionnaires. Could you tell us what those are?

A Well, if you had the document here then everyone could look at it or we could discuss it.

Q I was thinking more in general terms, Mr. Gariboldi.

We will get out the specific copies but let me put it this way. Special operations questionnaire is not an audited questionnaire, is it?

A That's correct.

Q The outside independent auditors did not prepare that or certify that report, is that correct?

A That's correct.

Q You testified that you looked at certain of these special questionnaires. Did you make an effort to get the most recent, the most up to date questionnaires?

A Yes. In other words, at the time I was looking at them I had the most recent questionnaire. Whether it was March or April.

Q Mr. Gariboldi, I would like to show you what has been pre-marked as New York Stock Exchange Exhibits B and C. I believe that Exhibit B has been received in evidence against the stock exchange but not against Haskins & Sells, Exhibit C--

MR. BROOKS: Plaintiffs.

MR. HYDE: And against plaintiffs. Exhibit C has not been so received.

MR. BROOKS: They were offered by us and received as against the plaintiffs I think.

THE COURT: Well, they are both in. B and C.

MR. BROOKS: B and C are both in evidence.

THE COURT: Yes.

Q Can you tell us if those are copies of duPont special operations questionnaires which you received and reviewed in connection with your investigation (handing)?

A Not unless you took them out of my files. There is no notation of mine on here. Normally I put some notations, I have some markings.

MR. BROOKS: Your Honor, let me correct myself. The reporter's schedule of yesterday's transcript shows Exhibit B in evidence but not Exhibit C. I will track that down in the text.

THE COURT: Well, I have Exhibit C marked in evidence.

MR. BROOKS: Well, I will go along with you, sir, and change the schedule here.

Q Mr. Gariboldi, let me show you --

THE COURT: However -- I'm sorry -- it is only, the thing I have up here is only the covering letter.

MR. BROOKS: That's Haskins & Sells Exhibit C I think, your Honor.

BY MR. HYDE:

Q Mr. Gariboldi, Stock Exchange Exhibit B was marked at your deposition as Haskins & Sells Exhibit 15 for

identification, and I do believe that that was taken from the files produced by you or Mr. Norman.

A I have in my hand a document marked Exhibit C that's Exhibit 15.

Q Exhibit C is 15?

A Yes. And that's dated 5/31. I doubt if I would have seen this document. That's what you have given me here. It is the May 31st, Exhibit 15.

Q Yes, it is a computation as of 6/11/70.

A I don't have that here.

Q Well, I am looking under the column "current report" not the date at the top.

A You know at that time we were in a merger, I wouldn't have seen this document. If I had it I wouldn't have had anything to do with this one.

Q How about Exhibit B? Stock Exchange Exhibit B. Is that one you would have seen?

A It appears the period of time that I would have been looking at it.

MR. CAMHY: Excuse me, your Honor, I am trying to be helpful. Is it a Gariboldi Exhibit -- a Haskins & Sells Gariboldi Exhibit?

MR. HYDE: Your copy is not. I am trying to match them up.

MR. CAMHY: If you have one that is a Haskins & Sells Gariboldi Exhibit I can represent we tried to keep his file intact and whatever came out that way is something that we found in the file.

BY MR. HYDE:

Q We are trying to resolve this question, Mr. Gariboldi. Let me go on. You testified I believe that in your review of certain special operations questionnaires you took note of the fact that no charge was being made to capital by reason of securities differences, is that correct?

A Yes.

Q Did you make any computation which would indicate to you what the result would be had securities differences of duPont been taken into effect?

A You wouldn't have to make a computation if you just look at item I, subtract item 2-A-2 from that and you would have a deficit of five million dollars just looking at this document. You don't have to make--

Q The capital deficiency is apparent on the face of the --

A Just looking at it. You don't have to make any computation just based on the document right here.

Q It shows that the firm is in deficit and out of

ratio,does it not?

MR. CAMHY: That's not what the witness said, I don't believe.

MR. HYDE: I am asking him what he said.

MR. CAMHY: He said that it would be.

Q Assuming that you take the securities differences into effect.

A There would be a capital deficiency if you took the total market value of the shorts into account.

Q Did you make any comparison of the securities differences shown on the long form, the Haskins & Sells answers to financial questionnaire for September 28, 1969, and the subsequent special operations questionnaires of duPont that you reviewed?

A I think I did look at them. If you will give me back that exhibit that you showed me before I will look at question 13 and see if the amounts were the same.

Q The long form is Exhibit 26, let me show you that (handing).

A Yes, I had looked at the long form and tried to relate them to the special operational questionnaire and I looked at them.

Q What does item 13 of the long form show with respect to securities differences?

A It shows long value of approximately 30 million short value of approximately 7 million.

Q What does the special operations questionnaire show specifically with respect to those items?

A 11 million and 10 million.

Q Of which?

A 11 million long, 10 million short.

Q In other words, comparing those two documents you saw that the longs went from approximately 30 down to 11?

A Yes.

Q Between what period of time?

A I would assume from the time Haskins & Sells submitted their report to --

Q Well, the date of that is September 28th.

A Yes.

Q And what is the date of the questionnaire, the special operations questionnaire?

A March.

MR. BROOKS: I object to counsel's misstating the answer of the witness. I believe the answer said the date that Haskins & Sells would have submitted the report, which was not the September date, but in turn as we know a later date November 26th I believe.

mh8 Gariboldi- cross

MR. HYDE: I believe that correction is appropriate, yes.

A That would be my answer, the date on which they would have submitted the report or a period of time after September 28th, when they finalized their figures.

Q Did you make any inquiry with respect to this reduction in the amount of long security differences?

A No, other than -- no, I did not.

Q Did you consider it relevant to your investigation?

A No.

Q Did you compare the difference in short security differences between the time of the Haskins & Sells audit and the time of preparation of the special operations questionnaire?

A Can you repeat that? I'm sorry.

Q Yes. Focusing your attention now on the short security differences did you compare the figures shown on the long form audited questionnaire and the figures shown on the short form special operations questionnaire?

A Yes.

Q Could you tell us what those differences are?

A They went from seven million to ten million.

Q They increased?

A They increased.

Q Did you make any inquiry with respect to why the number of short -- the amount rather of short security differences had increased?

A No.

Q Did you consider that fact relevant?

A No.

Q Mr. Gariboldi, there has been testimony in this case concerning item 4-D-3 on the answers to financial questionnaire, Plaintiffs' Exhibit 26. I direct your attention to that item, the figure of approximately eight million one hundred thousand dollars dividend charges (handing).

A Yes.

Q Is this an item that you reviewed in your investigation?

A If you would show me the capital computation I could tell you which items I reviewed. I had a capital comp in addition to this documentation and on that capital comp I would indicate the security differences, I would indicate the dividend shorts.

You are asking me to compare two different types of document. One is financial questionnaire, the other is New York Stock Exchange Rule 325 capital comp.

Q I am not asking you to compare it now, I am asking you if you were aware of the item --

A Yes, I was aware of the item, it appeared on the--there was a notation in the capital comp.

Q Isn't it fair to say that you carefully reviewed the answers to the Haskins & Sells financial questionnaire?

A I reviewed the answers to the financial questionnaire in those areas that I was interested in, security differences, what I would call the inadmissible assets in question 13 and my concern was what was the position of the firm as of March 12th. Whatever happened between September and March 12th I was concerned with, one the influx of capital, the capital going out of the firm, any other changes in inadmissible assets, increase or decrease in AI. Those factors were all weighted in. But the document that I had in my hand would be what was the current position of the firm. Not what happened six months ago or a year ago.

Q Right.

A That was the only thing I could evaluate.

Q Let me ask you this, Mr. Gariboldi: Did you consider in this evaluation of yours the question of what the net capital computation of Francis I.duPont had been in September, 1969, to be relevant to your inquiry?

A Yes, I could make my own computation from that. I was aware of the fact, I was told by Mr. Lill and Mr.

Gentile that the exchange was allowing duPont to make two computations. One including the security differences and the other excluding the security differences. So they were operating under a different method of computing capital. If I included the security differences they would be in deficit, if I left them out, they would not be in deficit at the time. And that would be the same type of situation I had in March as would have existed in September. Now I had no other way of going aboutthat other than getting the information from Mr. Gentile and Mr. Lill who said to me, when I asked the question, yes, we have an alternate method of computing New York Stock Exchange Rule 325 capital.

Q Well, I think you said in the course of that answer that you had the figures from which you could compute net capital, did you not?

A Yes, I could take the questionnaire and compute capital on my own.

Q The questionnaire being Plaintiffs' Exhibit 26.

A That's correct.

Q The Haskins & Sells answers to financial questionnaire as of September 28, 1969.

A Yes.

Q That contained all the information you need to

make a computation of net capital as of that date, did it not?

A Yes.

THE COURT: Why don't we take our recess for lunch.

(Luncheon recess)

AFTERNOON SESSION

2 P.M.

F R A N K G A R I B O L D I, resumed.

CROSS EXAMINATION CONTINUED

BY MR. HYDE:

Q Mr. Gariboldi, I would like to show you Plaintiffs'Exhibit 26, part 1 of the audited questionnaire of 1969 again.

I direct your attention to the answer to question 6G and ask you if that sets forth the figures with respect to securities paid for but not segregated.

A I'm sorry, what was that?

Q Does that set forth figures which were the securities paid but not segregated?

A Yes.

Q Is the magnitude of the segregation problem set forth there?

A Yes.

Q How about the question of securities failed to receive, failed to deliver? I direct your attention to item 4D. Is that revealed there, the magnitude of fails to receive and fails to deliver?

A I don't understand magnitude. There is a figure.

Q What is the figure?

mh2 Gariboldi-cross

A Fail to receive is 36 million, for customers and respondents one million seven.

Q How about dividends on securities fail to receive, is that disclosed there?

A It would be in the same section, 4D, a short valuation?

Q I believe so.

A The figure is there. It is eight million dollars, if I am reading it correctly.

Q I direct your attention to item 6D, and ask you if that sets forth the amount of unsecured accounts?

A Yes.

Q What is that?

A Almost two million nine.

Q Mr. Gariboldi, you have heard of the term material inadequacies letter, have you not?

A Yes.

Q You are aware, are you not, of the fact that this is a report which the independent auditors are, or were in 1969 and 1970, required to render in connection with every surprise audit in every brokerage house?

A You just made a statement. The answer is yes to the question.

Q You were aware of that?

A Yes.

Q Did you in connection with your investigation of Francis I. duPont ask for the most recent, or, indeed, for any, material inadequacies letter that had been given to the firm?

A No.

Q Let me ask you this, Mr. Gariboldi.

Based on the numbers which are set forth in the answers to the audited questionnaire which you have before you, Plaintiffs' Exhibit 26 in evidence, I direct your attention specifically to the long differences, long securities differences, the short securities differences, the securities paid for but not segregated, unsecured accounts, fails to receive, fails to deliver. In view of the totality of this, Mr. Gariboldi, did you form any judgment at the time you reviewed this questionnaire as to whether or not Francis I. duPont had inadequarcies in its accounting system?

A I couldn't tell by looking at the figures. There is no mention of it in the certificate.

Q I appreciate that, but I am asking you about given the size of the numbers under these items that I have just directed your attention to, were you able to form any judgment as to the accounting system or the back--

let me make that even broader, the back office operations of Francis I. duPont.

A The security differences would indicate there were differences the auditors did not resolve within a 45-day period. They only had 45 days to answer this questionnaire. So the question was did they have enough time to resolve these differences within that 45-day period. The audit was September 28th. They rendered their certificate on November 26th. So it is quite possible that they did not have time to until after look for the differences.

Q I appreciate that, but I am asking you whether or not, given the differences, given the fact that for whatever reasons they were not resolved in that period, you were able to form any judgment as to the adequacies of the accounting system or back office operations of Francis I. duPont?

A Not with the accounting system. The back office would indicate that there are differences -- question 6-G would indicate it paid for securities not segregated, the fails would have -- as long as the fails were on the right side the comparison of the fail receives versus the fail to deliver would indicate whether the cage was operating properly. You are talking about a three hundred

million dollar balance sheet of customers' accounts, so that the figures are really not that much out of line. The figures would be large because of the balances that are involved. You know, you have to take in question 6-A, 6-B, 6-C. You have to take all those items in, not one specific area. 6-G as opposed to the unsecured accounts. You relate it paid for against the customers' balances.

Q Was it your testimony then that given the size of the firm, and its total volume, you did not consider any of these figures to be out of line?

A I wouldn't make that statement. I wouldn't say they are out of line. But there appears to be a problem with securities paid for not segregated. There appears to be a problem in security differences. I wouldn't know where the problem would be, whether it is in the accounting records, whether the back office is failing to properly make substitutions. That I don't know. I don't know why the differences existed. You can't make that -- you can't make a decision based on the questionnaire at this point.

Q In your investigation of duPont, did you attempt to ascertain the reasons for any of these items?

A No. That was not my area. The back office procedure was being handled by Mr. Tom Weil, which was our operations department. It was his responsibility to look into the

back office. My job was just to anlyze the figures that I had as far as the back office problems, differences, paid for, that had to be followed up by Mr. Tom Weil who was the Hirsch partner in charge of our back office operations.

Q Directing your attention now to the spring of 1970, did you make computations from time to time of the net capital position of Hirsch & Co.?

A Yes, every month.

Q Hirsch & Co. was losing money at that time, was it not?

A Yes. You have admitted the P and L's in evidence. You can go back looking at them. They would tell you whether they were losing money or not. I don't remember specifically. Over a period of time they had lost money.

Q What was the effect of losing money on net capital?

A It has an effect of reducing the net capital.

Q If you continue to lose money for a long enough period of time that may deplete net capital, may it not?

A Yes.

MR. CAMHY: I object to the form of the question. It seems to me it is self-evident.

MR. HYDE: If it is conceded.

THE COURT: It's been answered.

Q Did you make any projections in 1970, Mr.

Gariboldi, as to what might happen at Hirsch & Co.. with respect to its net capital position, given certain assumptions?

A We made the computations normally on a monthly basis. We would--

Q -- talking about projections into the future now, not on a monthly basis.

A I think at one point we did.

Q What did that disclose?

A That if you lost money for a period of a year--say going through the end of the year you would have problems.

Q Capital problems?

A Capital problems.

THE COURT: When was that projection made?

THE WITNESS: Around the beginning of the year 1969, early 1970. That would only give you an indication that you would need additional capital at some point of time.

Q Possibly by the end of theyear of 1970?

A I don't have the capital computation. If you show me the capital computation of Hirsch & Company at that time when I would give you an estimate.

Q Assuming that one or more of the partners of Hirsch & Co. were to leave the firm and withdraw their capital, would that also bring about, or would it also have

brought about net capital problems?

A Yes.

Q In 1970?

A Yes.

Q And there was a partner at that time named Mr. Meyer, was there not?

A Yes.

Q What was his posture?

A I think at that point he was a limited partner.

Q When did he become so?

A I don't remember the date.

Q Would it be your recollection that that was at the end of the year 1969?

A About that time.

Q And he changed his status from general partner to limited partner?

A Yes.

Q Had he given any indication that he -- strike that.

In connection with his becoming a limited partner, had he withdrawn some of his general partnership capital?

A I don't know. He may have taken some monies out. I don't have the figures in front of me. I couldn't tell you if he did take any money out.

Q Was it brought to your attention in 1970 that he wished to wirhdraw some or all of his limited partnership capital?

A I don't think I was told specifically, but once a man becomes a limited partner there normally is agreement between the parties involved as to the amount of monies that the individual --

MR. CAMHY: I object to that, your Honor. It's speculation.

THE COURT: All right.

MR. CAMHY: There would be an assumption, suspicion, or speculation.

THE COURT: I suppose that's right. We can ascertain those facts.

Q Did you have any conversation at Hirsch & Company with respect to the subject of Mr. Meyer withdrawal of capital?

A No.

Q Now, sometime prior to the discussions leading up to the merger with duPont, Hirsch & Company had been discussing combination with other brokerage firms, had it not?

A Yes.

Q Would you tell us when you first heard of the proposed combination of Hirsch and Company with another brokerage firm?

A End of '69, beginning of '70.

Q What did you hear? I refer you specifically to what the firms were you had discussions with?

A I think I testified in my deposition to Bioren, Robinson & Company, Shearson, Hammill, Hentz & Company, I think there was Newburger in there. I am sure you have them in my work papers, as part of the exhibit. The work papers are all together.

Q When you say the work papers, what do you mean?

A Whatever examination I made of those companies. If I left a particular firm out, you know, I don't remember them all.

Q Were you asked by the partners of Hirsch & Company to make an investigation of other firms from time to time.

A Yes.

Q What did you do in such investigations?

A Normally, I would be given a balance sheet, a capital computation, I would review them, and then we would have a general discussion as to the status of the firm, whether it was feasible to merge with the firm.

MR. HYDE: Your Honor, we omitted to have these premarked. I would like to have marked as Haskins & Sells S for identification and T for identification as the next two exhibits.

(Defendant Haskins & Sells Exhibits S and T were marked for identification)

MR. HYDE: I am afraid we will have to get extra copies of these.

S was Gariboldi Exhibit 39 on the deposition,

and T was Gariboldi Exhibit 40.

Q I show you Defendant Haskins & Sells Exhibit S for identification,and ask if you can tell what that is.

A It's Newburger & Company, various financial statements of the company.

Q Does that include work papers prepared by you?

A. These are not my work papers. It's my handwriting on the top. The cover sheet is. The second sheet is. That's my handwriting. These were submitted by Newburger and Company to Hirsch & Company.

Q And reviewed by you?

A Reviewed by me. Yes.

Q Let me show you defendant Haskins & Sells Exhibit T for identification, and ask if you can identify that exhibit.

A This is Hentz & Company. The cover sheet is mine. The notations along the side, the pencil figures, are my figures. The other items were submitted Hentz & Company to Hirsch & Company.

Q Going back to Exhibit S, let me show you handwriting at the bottom o f the page headed "Aggregate indebtedness, rule 325."

Is that your handwriting?

A This is, yes.

Q What does that consist of, the handwritten portion?

MR. CAMHY: Your Honor, now that he's going to be asked to read the content of this material --

MR. HYDE: I am not asking for content. I want to describe what it is.

MR. CAMHY: You are asking what's in the papers, and they seem to relate to other companies. If they don't relate to duPont and relate to Hirsch I don't see the relevancy and I have a relevancy objection to the question.

THE COURT: My assumption was that this was following up a question. These were firms that Mr. Gariboldi had been investigating for a possibility of a merger with Hirsch. Is that the question?

MR. HYDE: Yes.

THE COURT: If that is so, they are relevant.

MR. CAMHY: You think they are?

THE COURT: Yes, I certainly do.

MR. CAMHY: Thank you, your Honor.

MR. HYDE: I think we have a question pending.

A Without trying to study them, I was trying to make some comparison, adjusting an aggregate indebtedness. The effect it would have on putting these firms together, if I remember correctly, either Hentz or Newburger, the discussions didn't last very long. I don't remember who called them off.

Q But you did make an investigation, at any rate?

A I made an investigation, but it was just limited to looking at the financial statements.

Q From them you computed such things as net capital, aggregate indebtedness, and so forth.

A I didn't compute. It was already here. I made a comparison of from one period to another possibly.

Q Let me show you Exhibit U for identification and ask if you can identify that.

A The cover sheet is mine, and the financial statements attached were submitted to Hirsch & Compnay by Bioren to Mr. Mundheim. There are no other notations on the sheets that are in my handwriting, just the cover sheet.

t2a pm

MR. HYDE: Your Honor, I would like to offer in evidence defendant Haskins & Sells Exhibits S, T and U.

THE COURT: Well, other than the testimony, Mr. Hyde, what purpose will those exhibits serve?

MR. HYDE: I want to show, your Honor, the type of work that was entrusted to Mr. Gariboldi, not only in connection with the duPont merger but in proposed combination with other brokerage firms as well to show that he was entrusted --

THE COURT: All right. I understand that, but I got that from the testimony and the fact that he was shown these various -- received these various statements and went over them. I got that from the testimony. And made computations. I don't think you need that in, unless I am going to learn something from reading them.

MR. HYDE: We offer it for the purpose, A, of showing the trust that the partners of Hirsch & Company placed in Mr. Gariboldi, and secondly, of course, we will get into the question of their desire to merge with other firms about this time.

THE COURT: Well, my own feeling is that it is not going to aid me very much. I think that you have got it already in the record. I think you have got it clear. I understand, from what I understand from the testimony

I understand what happened. I don't see how that is going to help. Unless there are some computations on there by Mr. Gariboldi which shows how he disposed of the matter. From his conversation I gather that he looked at these and reached -- or rather the conversations broke off, certainly no action was taken affirmatively.

MR. HYDE: That is right.

THE COURT: I think that is all you need.

MR. HYDE: I will not pursue it at this point then, your Honor.

THE COURT: All right.

BY MR. HYDE:

Q Mr.Gariboldi, based upon your reading of the audited financial questionnaire, Plaintiffs' Exhibit 26 in evidence which you have got before you, did you form any opinion as to the financial and operating condition of duPont? And I am limiting my question now to the long form audited questionnaire.

A I think you asked me the question before. The only items that would be in question would be items in 6-G and items in Question 13, the security differences. That the --

Q These did raise questions in your mind?

A That would be the only back office problems that would exist. Looking at the questionnaire.

MR. HYDE: I have no further questions.

MR. BROOKS: I have some questions, your Honor.

MR. SINGER: We have no questions, your Honor.

THE COURT: Mr. Brooks has some.

MR. POLLACK: May we have that stricken, your Honor? Our signals were crossed.

THE COURT: All right. I won't hold you to it.

BY MR. BROOKS:

Q Mr. Gariboldi, what do you do now at Paine, Webber?

A I am a staff assistant to the controller. I do special projects, general control, put in projects.

Q Do you do any Stock Exchange Rule 325 in your work at all?

A I don't have prime responsibility for Rule 325. I have the responsibility of reviewing the joint regulatory report which has Rule 325 in it.

Q Would it be fair to say that today the joint regulatory report has incorporated and superseded what we hav e been referring to as the long form questionnaire and the special operations questionnaire?

A Yes.

MR. CAMHY: Your Honor, I don't know that it is relevant. Are you going to pursue this, Mr. Brooks?

MR. BROOKS: No.

Q Doyou have any idea of the amount of Hirsch losses, Hirsch operating loss for the year 1969?

A I read my deposition and I think I stated that it was in excess of $2 million. The exact amount I don't remember. You have the P and L statements, you have admitted those in evidence.

Q In connection with the work you did analyzing the duPont firmfor Hirsch, Hirsch & Co., did you make any visits to the premises of the duPont firm?

A Once.

Q Only once?

A Once to see Mr. Gentile, and I think I went another time to see Mr. Paul duPont. I had to bring him some papers.

Q Any other times?

A No, sir.

Q What caused you to go to see Mr. Gentile?

A I had a number of questions based on my review, after I had spoken to Mr. Mundheim, Mr. Kohns and Mr. Petrillo it was decided I could go over and talk to Mr. Gentile and ask him questions.

Q Did you write those questions out on any of your work sheets?

A Yes.

Q Do you recall whether those questions were showed to you at your deposition?

A I think they were.

Q If I can only find them, sir, I will show them to you again. Let me show you something which may contain them, and if itdoesn't Ithink it may be relevant.

MR. BROOKS: Your Honor, we have had a chance to pre-mark these but we didn't expect Mr. Gariboldi today so we haven't Xeroxed them for counsel or the Court. This has been pre-marked as Exchange Exhibit YY, and was Haskins & Sells deposition Exhibit No. 37, the deposition of Mr. Gariboldi (handing).

Q Does that document have within it the questions which you wrote out?

A Yes.

Q First without referring to the list, can you recall the questions?

A Generally.

Q Well, will you tell me what questions they were?

A Basically it appears that I reviewed their March 12, 1970 operations questionnaire which Mr. Hyde had given me before, and I had comments against each item. Basically it was for my own information to find out how were the items computed, what is the status of the item

now, and what was the firm trading loss. Then another case I had a question on whether they had any controlled stock in their subordinated borrowings. Another question was, was there a $20 million capital commitment which duPont had from the duPont family, or the Laird Foundation or someone, that was one of the questions.

Q Let me stop youfor a minute. Do you recall the answers to that last question?

A Mr. Gentile told me he was unaware of the $20 million commitment.

Q Did you report that back there to Mr. Mundheim and Mr. Kohns?

A Yes, and the item appeared in the Haskins & Sells long questionnaire. I think it was note No. 4 if I could have thatquestionnaire back I could quote the note.

Q That was the long form questionnaire as of September 28, 1969 that you are referring to?

A That's right.

Q Plaintiffs' Exhibit 26 (handing).

A Note No. 4 on page No. 7.

Q Then Exhibit 26 reports that there is such a commitment as of September 28, 1969, is that correct?

A Yes.

MR. HYDE: Excuse me, so the record is clear, your Honor, the commitment is for a maximum of $20 million, not $20 million.

MR. BROOKS: That is correct.

Q And do I understand your testimony that in, would it be April that you had your meeting with Mr. Gentile? Is that -- I would like you to give me the date you met with Mr. Gentile as best you can.

A It might have been the end of April or the beginning of May. If I looked at his March 12th --

Q Spring --

A I have no date on here unfortunately.

Q Could you approximate as best you can for me the date you met with Mr. Gentile?

A I don't know.

Q Is April a fair reckoning?

A From the March 12th, if you can tell me the date of that when they completed the March 12th special operations questionnaire, you know. It would probably be in April.

Q Do you know how many days you had to complete a special operations questionnaire in March of 1970?

A No, sir.

Q Would it be about 15?

MR. CAMHY: Your Honor, the witness said he didn't

know.

Q Well, whichever the date, it was some time after March 12th, do I understand your testimony that Mr. Gentile in March or April of 1970 denied knowledge of the pre-existence of this capital commitment?

A I don't think he denied it. He said he was unaware of it.

Q He was unaware of it.

A Yes.

Q And you then reported this back to Mr. Mundheim and Mr. Kohns?

A Yes. My question at the time was how much of this commitment had been used, if any, because I was taking the questionnaire and trying to work it from the questionnaire to the current date trying to determine whether any of that commitment had been -- any of the moneys came into the firm.

Q Did you have any questions on your list about security differences?

A Without looking at it, if I didn't have the question here I did ask Mr. Gentile if the security differences were still the same from the March 12th questionnaire to the time I spoke to him. And the answer if I remember correctly was they are basically the same. Quote unquote.

Q Any other questions that you had there?

A I think I had asked him about the decrease in furniture and fixtures. It appeared that somewhere along the line I had made some notation that either from the Haskins & Sells to the year end to March 12 there had been a reduction in furniture and fixtures dollar amount.

Q Do I understand you correctly that Exhibit YY which you now have in front of you is a schedule of questions which were left in your mind after you reviewed the documents which Mr. Mundheim had obtained ~~from~~ for you with respect to the condition of the duPont firm?

MR. CAMHY: Your Honor, I am having trouble working with the exhibit, relating it to Exhibit 37 on deposition. Can you tell me what page it is that you are talking about?

MR. BROOKS: What page of the exhibit?

MR. CAMHY: Yes. You are talking about a list of questions --

THE WITNESS: These were not unresolved. These were the questions I had. This was the piece of paper I had and I walked over with and asked Mr. Gentile, just they were questions of my own but they were not -- the question was they were not unresolved.

MR. CAMHY: Your Honor, my problem is more fund-

I am just trying to identify which of these pages I am supposed to be looking at while I am --

MR. BROOKS: We are not focusing on any page at the moment. We are asking about the whole exhibit.

MR. CAMHY: Your Honor, I have heard the words list of questions and I am trying to find the list of questions.

THE COURT: Well, maybe Mr. Gariboldi will tell you. He looked through it and said that that was the exhibit. I don't have it.

MR. BROOKS: It is Haskins & Sells Exhibit 37, I believe, of the deposition of Mr. Gariboldi.

MR. CAMHY: The one that I have has many, many pages of accounting analysis paper most of which contained various computations based on different dates.

THE COURT: Well, why don't you come up here and look at Mr. Gariboldi's --

MR. CAMHY: Thank you, your Honor. Would you tell me which page it is that is the list of questions, Mr. Brookks?

MR. BROOKS: Mr. Gariboldi can do that better than I.

MR. CAMHY: You said incorporated in here was a list of questions.

MR. BROOKS: Mr. Gariboldi said that.

MR. CAMHY: No, I think you said that.

THE COURT: No, Mr. Gariboldi said that, Mr. Camhy.

MR. CAMHY: Your Honor, maybe I have just confused everybody. I am sorry.

THE COURT: Well, my understanding is that the list of questions within that document.

THE WITNESS: They are in the back, your Honor. Here I have item 1 operation charges against capital. The inventory, short form AI, and so on how is the penalty computed, as of what date --

MR. CAMHY: It is halfway through the thing.

THE WITNESS: -- realize fair liquidation -- you know, then I have --

THE COURT: Well, the only thing is Mr. Camhy, can you find it now ?

THE WITNESS: Thereafter the systems engineering --

Q I just want to get in mind, Mr. Gariboldi, the sequence of events.

Is it correct that you first got documents from Mr. Mundheim and Mr. Kohns showing you various data about the financial and operational condition of the duPont firm which analyzed --

A Yes.

Q And then you wrote out these questions that you wanted to pursue further, is that correct?

A They were my own questions. At that point I didn't know whether I was going to pursue them.

Q I understand that but the questions were written out after you reviewed that data that had been supplied, is that correct?

A At the time I was reviewing.

Q Right. Then you met with Messrs. Mundheim, Kohns and Petrillo, is that right?

A Correct.

Q And you reviewed your questions with those gentlemen?

A Yes, sir..

Q Is that correct?

A Yes.

Q And as I understand they said these were appropriate questions to ask, is that correct?

A Yes.

Q And then you went to Mr. Gentile's office and asked the questions.

A Yes.

Q And then you reported back to Messrs. Kohns, Mundheim; is that correct?

A Yes.

Q What else is in Exhibit YY other than those questions?

A There is a systems engineering laboratory prospectus.

Q Was that the issue you were concerned about the concentration in?

A It appeared that one of the capital accounts has system engineering and my question was whether it was controlled stock.

Q If it was it would be eligible for capital credit or less capital credit than if it were not controlled, is that correct?

A Yes.

Q What else is in that exhibit?

A There is a capital computation as of 3/12/70 and the last sheet is, it appears to be Al Norman's handwriting, you know, it is not part of my work papers. I don't know how this got attached.

Q Can you read it?

A It says Frank, what are the current liquid assets appearing on the balance sheet to accept this as a credit, duPont, capital --

Q Are those figures on there under Mr. Norman's handwriting figures that relate to the condition of duPont?

A I really don't know. You know, first time I am seeing it.

Q Well, it says "FID" in --

A I would assume this would be the subsidiaries. The 3 --

Q Do those letters have FID prefacing those figures indicate to you that the figures are about the firm of Francis I. duPont?

A It would appear that it is the subsidiaries. You know, I can't tell from that. Just the name Francis I duPont, Allan would be there --

Q I understand it is Mr. Norman's handwriting?

A It is not mine.

MR. CAMHY: That's my question, Mr. Gariboldi. Is just the top Mr. Norman's handwriting or is it down the sheet Mr. --

THE WITNESS: The whole sheet is.

MR. CAMHY: The whole sheet is.

A I don't know how -- that is not my work paper.

Q Do you recall duscussing the data reflected on the sheet in Mr. Norman's handwriting with Mr. Norman?

A I assume we had a discussion.

Q Do you recall it?

A Yes.

MR. BROOKS: Your Honor, I offer Stock Exchange Exhibit YY in evidence.

MR. CAMHY: I have no objection to it.

xx (Defendant New York Stock Exchange Exhibit YY was received in evidence.)

Q Mr. Gariboldi, I show you a document which was marked at your deposition as Haskins & Sells Exhibit 17 which has been premarked as Stock Exchange Exhibit OO, and I ask you if you can identify it for me (handing)

A It looks like a combination duPont, Hirsch combined '69, '68. I didn't prepare it.

Q You did not prepare that?

A No. And it is not my handwriting up on the top.

Q Do you know who did prepare it?

A No, sir.

Q I next show you a document that was marked in your deposition as Haskins & Sells Exhibit 18 and has been parmarked as New York Stock Exchange Exhibit PP in this trial. It is headed "Frank, just a few ideas in case of a crisis". Can you identify that document for me (handing)?

A This is a document I received from Mr. Kohns and the Frank on there I would assume that Paul duPont was referring it to me, had given it to Mr. Kohns and wanted

my comments on this document prepared by Paul duPont to Mr. Thomson of duPont.

Q What did you understand by the word "crisis" that appears on the front page?

A Well Paul duPont had the prime responsibility of putting the two firms together on financial basis, taking the assets of one firm, the liabilities of the others and just putting them together, seeing what capital structure of the firm would be.

Now, when you do that there are a number of assumptions that have to be made, that the admissible assets, the capital charges, the AI, there are duPont applications in some of these items. So the question would be how do we eliminate duPont applications, how do we get rid of the hidden assets, how do we get rid of AI? Now around it mechanically you put figures together then you analyze them to see if you can eliminate Rule 325 items that negate your net capital. And these were some of the comments of Mr. Paul duPont on his own, based on his analysis, he felt would be areas that could be duplications, eliminations of some of the items and that had to be taken -- could be taken into account , when you physically put it together you came up with a capital problem, a capital deficiency.

Q So if you needed more capital these were areas

that might prove fruitful in doing some work to generate that capital, is that a fair statement?

A I assume it would be going out at the same time. He put a bunch of figures together and these were the areas that he wanted to look at.

Now, when you say "crisis", the crisis doesn't happen on day 1, it -- the crisis is prior to that. Because on day 1 the Exchange would say, gentlemen, you have got a viable firm,we want to make sure you have got proper capital. So these items would have to be resolved by that. You are talking about June 12th and you are going to a merger on July 2nd.

Q And the problem that you understood Mr. duPont was trying to solve was a problem in respect to the firm that was to come out of the merger that was planned at this time, is that correct?

A Yes.

mhl Gariboldi-cross

T2B Q Did you agree with Mr. duPont's analysis of fruitful areas to generate some new capital in?

A I didn't review his work papers. The items in question appear to be areas that could generate capital, depending on how they were handled. The question of the recovery of tax refunds, the sale and leaseback of furniture and fixtures. You know, these were all areas that -- the subordination of the employees' trust of Glore, Forgan, these were all legal questions that would have to be resolved prior to the merger.

Q Did you form any judgment on whether Mr.duPont was being optimistic or conservative in the amounts of capital he hoped to gain from these areas?

A I think I might testify in my deposition stated I thought he was optimistic.

Q Did you tell Mr. Kohns and Mr. Mundheim that?

A Yes. I told Mr. Kohns because Mr. Kohns gave me this document.

MR. BROOKS: I offer in evidence Stock Exchange Exhibit PP, your Honor.

THE COURT: Mr. Camhy?

MR. CAMHY: No objection.

(Defendant Stock Exchange Exhibit PP received in evidence.)

xx

Q Mr. Gariboldi, a similar document appears in your file and I ask you if you can identify it. It is Haskins & Sells Deposition Exhibit 19 pre-marked Stock Exchange Exhibit QQ (handing). Have you seen that before?

A Yes, I saw it.

Q Did you see it in connection with your investigation of the duPont firm?

A It was given to me by Mr. Kohns.

Q In connection with that project?

A This is June 16th. This is after -- this is when the merger was on. Had nothing to do with my investigation. This is a document that was given to me June 16, 17th by Mr. Kohns.

Q After the merger had been agreed upon.

A All systems go at this stage.

Q Can you tell me what that document is?

A It is a memorandum from Mr. Swanton to Mr. Lynch--

MR. CAMHY: Your Honor, I wasn't going to interrupt Mr. Brooks with a procedural complaint but I am told we were not given copies of these and we were not given a list of what would be used. That is a practice which we have followed religiously all through the three days. There was a lot of complaint about this exhibit or discussion about it during the deposition. Wasn't there a

way you could have told us we were going to see it this afternoon?

MR. BROOKS: I didn't expect you to put on Mr. Gariboldi today.

MR. CAMHY: I told you yesterday he would be here.

MR. HYDE: It came as a surprise to me I must say, Mr. Camhy.

MR. CAMHY: It seems to me I read his name off yesterday. I am told we have received no list of any exhibits that the stock exchange has been using, not only this one.

MR. BROOKS: These are exhibits, your Honor, that I am using in cross-examination. I cannot anticipate what I am going to cross-examine into until the basic examination has taken place. This document should come as no surprise to Mr. Camhy since it is his deposition exhibit.

MR. CAMHY: It is really a matter of convenience, your Honor. I know what the document is, it is just that physically I am now having a lot of difficulty coping with the examination because I have to hunt one up out of the deposition exhibits or try to remember what it looks like. My only request is that since you told me you weregoing to call Mr. Gariboldi I realized that I had better have him here and just put him in front of you. So if you

plan to call more witnesses or do more work would you try to get us these documents so we can work from them?

MR. BROOKS: I am prepared for your plaintiffs when they appear but I expected they would be appearing now and not Mr. Gariboldi.

Q I believe you said this was a memorandum to Mr. Lynch from Mr. Swanton. Can you tell me who Mr. Lynch was?

A Reading this memorandum it says Mr. Lynch is the acting chief administrative officer of the Glore, Forgan and W.R. Staats, Inc.

Q Did you know who Mr. Swanton is?

A I didn't know Mr. Swanton. I think -- I don't know Mr. Swanton. I have never met Mr. Swanton.

Q Did you know he was employed at Glore, Forgan?

A Yes, I heard --

MR. CAMHY: May we have the date of the memorandum please?

THE WITNESS: June 15, 1970.

MR. CAMHY: Okay, thank you.

THE WITNESS: Covering memorandum June 16, 1970, from --

MR. CAMHY: Very good, thank you.

Q Mr. Gariboldi, would it be fair to say that this is

another document which suggests ways in which the combined firm to arise from this tripartite merger could be improved?

A The answer to the question is yes, but the document, there were areas which had to be reviewed before the merger went into effect. You just don't put the three firms together you have to review the back office operation review the -- ~~they're~~ their difference accounts, ~~they're~~ their suspension accounts, the dividend accounts to make sure when they go into one firm you have eliminated the differences. Or you allow the differences to remain back with the old firm. You don't just move them into the new firm. These were areas that had to be reviewed and Mr. Swanton being I think the senior vice president probably in charge of operation had written to Mr. Lynch who was an attorney and said this is what we have to do.

Q Did you form a judgment about whether Mr. Swanton was being optimistic or conservative in saying where progress could be made?

A I think I made the statement I thought he was being optimistic and --

MR. CAMHY: Objection, your Honor. Now Mr. Swanton isn't in court. What we are having here is the kind of thing that I was criticized for which is taking a whole package then asking the witness to really adopt it

by criticism, and that is here Mr. Swanton writes to Mr. Lynch and he writes a whole set of comments and instead of asking the witness the substantive questions inherent in the document he says now what do you think of what Swanton said? Well, Swanton isn't here and we now get what Swanton said into the record by asking Mr. Gariboldi what he thinks of what Swanton said. When I tried to do that with respect to a document, Mr. Dominach's document I was told that because Mr. Dominach wasn't in the room and because the witness -- I couldn't do it. Now we are having all of Mr. Swanton's statement brought right in by asking Mr. Gariboldi what he thinks of Mr. Swanton's statement.

THE COURT: Is that an objection, Mr. Camhy?

MR. CAMHY: That is an objection, your Honor, it is a hearsay objection.

THE COURT: Let me see that document please.

MR. BROOKS: Your Honor, my question only asked for Mr. Gariboldi's judgment on what Mr. Swanton said not what Mr. Swanton said. I think the document will say what Mr. Swanton said if it is admitted into evidence.

THE COURT: Well, my understanding is that, at least I thought I heard Mr. Gariboldi indicate that the merger had already -- well, if not consummated was

effectuated by the time that document came to his attention. Is that correct?

THE WITNESS: Yes, sir.

MR. BROOKS: I would be pleased to pursue that, your Honor, because I think the facts are otherwise.

Q Mr. Gariboldi, do you recall a memorandum in principle being signed on or about June 6, 1970, contemplating the merger?

A I didn't see the document on June 6th.

Q I didn't say whether you saw it on June 6th. Do you recall that one was signed on or about June 6th?

A I don't remember seeing anything signed.

Q Do you recall seeing such a memorandum in principal dated June 6th?

A Not unless you show it to me I wouldn't know.

Q I show you what was Haskins & Sells Exhibit 34 in your deposition which has been pre-marked Stock Exchange Exhibit triple A for this trial and I ask you if that is the agreement that we are discussing (handing).

A This document is not signed, it is not dated and--

Q Is that an agreement in principle?

A I don't know.

Q All right. Has it been reviewed by you before?

A I had a document similar to this which I had

a document similar to this which I had looked at in order to decide what type of assets had to be moved.

Q And what was the agreement you looked at similar to that?

A I think it was an agreement something like this which was not signed. You said to me it was signed.

Q Was that before the merger actually took place on July 2nd?

A It would have to be the last week in June that I would have looked at a document. Whether it is this document or one similar to it.

Q Does that document have your markings on it?

A No, sir. I will look through it.

Q Do you know when the merger was consummated?

A No, sir.

Q Would July 2nd refresh your recollection?

A July 2nd was the date '69 of the merger, I'm sorry.

MR. BROOKS: Your Honor, I submit that no binding agreement was signed until July 2nd and that had anybody wished to extricate themselves from the deal that was proposed at this time they could have done so and that the problems raised by Mr. Swanton, in Mr. Gariboldi's judgment on it, and whether he communicated that judgment to his principals is a relevant area of inquiry.

mh9 Gariboldi-cross

THE COURT: Did you see that document, Mr.--

THE WITNESS: I saw this document. It was shown to me by Mr. Kohns. When he came back one day from a meeting with duPont he showed it to me.

Q That was before the merger was consummated on July 2nd, was it not?

A Yes.

MR. BROOKS: I offer this document in evidence, Stock Exchange Exhibit double Q.

THE COURT: Do you have any objections, Mr. Camhy?

MR. CAMHY: Well, I made my objection, your Honor, and I assume it was overruled.

THE COURT: All right.

(Defendant New York Stock Exchange Exhibit QQ received in evidence.)

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Q I am not sure whether you have answered it but I will ask again so you can tell me if you have answered it. Did you form a judgment on whether Mr. Swanton was being optimistic or conservative in the areas which he thought could be fruitfully resolved to improve the merged firm?

A I thought Mr. Swanton was optimistic because he only had 15 days or thereabouts to make these-- to implement this memorandum.

Q And did you communicate that to Mr. Kohns and

mh10 Gariboldi-cross

Mr. Mundheim?

A Only to Mr. Kohns.

Q Do you know what the Wright report is, Mr. Gariboldi?

A Yes.

Q Did you review a Wright report in connection with your investigation in duPont?

MR. CAMHY: Your Honor, may I request to know what a Wright report is? Is that out of order? I don't know what a Wright report is.

Q Could you tell us what a Wright report is, sir?

A A wright report is a report put out by an individual known as Mr. Wright. There is a -- Wright Associates. And they would take financial information of approximately seven or eight firms put it in their format and then visit the various firms and try to compare a Hirsch with a duPont, a Reynolds, a Bache. Whoever the eight firms might have been in the survey. And it listed various statistical information, how capital is employed and various other issues.

Q Did you review such a report in respect to duPont?

A I think I probably saw one.

Q Saw one.

A Saw one or a document which appeared to be a Wright report. I think you showed me one and I couldn't

tell you whether it was duPont, whether it was Hirsch, without knowing what the number of the firm would be, you know. If it was firm A, or B or C.

Q Other than not being able to tell me whether the Wright report which I showed you was or was not one in respect to duPont can you tell me whether in your investigation you did review such a report to duPont?

A My answer would be no.

MR. CAMHY: Your Honor, may I record my objection, or exception to your Honor's ruling insofar as it seeks the proof of its content. I think your Honor was probably right in overruling my objection insofar as it tends to show what he received, that this is something that he received. But insofar as it purports to set forth the truth of what's in it I don't think it is right and I do renew my objection on that ground.

MR. BROOKS: I don't offer it for the truth of what's in it, your Honor.

THE COURT: I gathered the only purpose of it was to find out what Mr. Gariboldi's reaction was and had he communicated that reaction.

MR. BROOKS: Thank you.

Q Mr. Gariboldi, a while ago I think you were shown special operations questionnaire for Francis I.

duPont ended May 31, 1970, and there was some doubt in your mind whether you had seen that before because it had June 11, 1970, capital figures on it, and Mr. Camhy then agreed to stipulate that anything found in your Gariboldi file would have been documents that you reviewed at the time and --

MR. CAMHY: No. No. I only said that we took the Gariboldi file and kept it intact. And if you want to tell him that something was on that exhibit then you can tell him it was in the file. And if it means something to him that's the point. But we took his file as it was and tried not to disturb it in any way.

MR. BROOKS: All right, I will proceed that way.

Q This has been marked again as Stock Exchange Exhibit UU. It was Exhibit, Haskins & Sells. Exhibit 23 at your deposition. It is the operations questionnaire of Francis I. duPont for the month ended May 31, 1970, and has on it capital information as of June 11, 1970. And I represent to you that was shown to you at your deposition, from your file and I ask you if you recall having gotten that prior to the merger between Hirsch and duPont (handing).

A It is difficult for me to say whether I received this prior to the merger. If it was in my files then I

received it. Because what I did was to take whatever documents I had, Mr. Kohns or anyone that was around we just put them together in folders. So whether I physically had this, this document would have to be after my initial examination and if I would have received it in June by that time we were already into the merger. So that these financial figures other than to show that the total longs and shorts were still the same, the ratio was approximately the same, it would have little or no bearing on the status of the merger at that time.

Q What do you mean already into the merger?

A Well, at some point in June we were told that we were to make the necessary arrangements to have the people from duPont come over and facilitate the moving of the Hirsch records into duPoint should the merger go through within the next couple of weeks.

Q Should the merger go through in the next couple of weeks.

A That's correct.

Q Did you understand there was a possibility that it might not go through?

A There is always that possibility in a merger as you just said to me that you could pull out at any time. You don't go until 9 o'clock the day of the merger that you

know you are in operation.

Q Do you know of mergers that have been called off at the last minute in the brokerage industry?

A I can tell you I have been involved in one that went almost to that time where it is called off or could be called off.

Q Let me show you what was marked as Haskins & Sells Exhibit 21 at your deposition which I marked this afternoon as Stock Exchange Exhibit double S, it appears to be a capital computation of Francis I. duPont. Is that in your handwriting (handing)?

A No, this is not my handwriting. This seems to be a little notation of mine here, May 1st 1.8 loss.

MR. CAMHY: May we have the deposition exhibit number?

MR. BROOKS: Yes, I did give that. I will give it again. Haskins & Sells Exhibit 21 at the deposition.

MR. CAMHY: Thank you.

Q Does your handwriting on that document indicate that you saw it prior to the merger?

A I would have seen this document prior to July 2, 1970.

Q What is the latest date shown on there for the capital ratio of the duPont firm?

A 5/28/70.

MR. BROOKS: Your Honor, I offer this in evidence as Stock Exchange Exhibit double S.

MR. CAMHY: Mr. Brooks forgive me. Give me a quick rundown --

MR. BROOKS: Why don't I show it to you?

MR. CAMHY: No, tell me what it is. What did he say it was?

MR. BROOKS: It is a computation of capital for Francis f. duPont as of May 28, 1970.

MR. CAMHY: Did he say he received it?

MR. BROOKS: Yes, he did before the merger.

MR. CAMHY: Did he say who he received it from?

MR. BROOKS: Who did you receive it from?

THE WITNESS: Normally I would get it from Mr. Mundheim or Mr. Kohns.

MR. CAMHY: Do you know the source he got it from?

THE WITNESS: No.

MR. CAMHY: No objection.

xx (Stock Exchange Exhibit SS received in evidence.)

T3a

MR. CAMHY: Again, just as something which the witness received.

Q Mr. Gariboldi, I show you some handwriting in the lower left-hand corner of the second page of Exhibit FF. Can you tell me if that is yours?

A Yes.

Q What does it say?

A It says "security differences,long, short."

Q Does it say anything about whether they were included in the capital computation or excluded?

A That notation means to me they were excluded.

Q Excluded?

A That's right.

Q How did you compute the capital of Hirsch & Company, sir, in respect to those items?

A We would include the short differences as a capital charge.

Q What about the long differences?

A The long differences would be excluded.

Q You wouldn't charge a percentage of those?

A I think I testified to that. I will change my testimony that I gave you.

Q Change it?

A Yes. I read it, and I didn't want to strike

anything out.

Q I thought it strange at the time.

A Yes.

Q I have no problem with your changing your testimony.

A My answer to your question is the long values are not included in the capital computation. You do not increase the net capital for the market value of the long.

Q Your practice at the time was to charge the full short values?

A Yes.

Q You had observed that duPont was doing it differently, ignoring the short value as a charge?

A I noted that, and I spoke to Mr. Lill, as I testified before, and Mr. Gentile. They said that duPont had special dispensation from the New York Stock Exchange in computing capital in an alternate way excluding those items.

Q Did you advise Mr. Kohns and Mr. Mundheim of that?

A Yes.

Q To your knowledge, did they know what the treatment for those items was at Hirsch & Company as computed by you? They knew you charged the shorts?

A Yes.

Q Did you tell them you believed that to be the proper way?

A I told them that's the way the New York Stock Exchange told us at Hirsch & Company to compute our capital, based on the examinations that we had with the New York Stock Exchange.

Q We spoke earlier, Mr. Gariboldi, about your computations of Hirsch & Company's capital and your applying against that a loss rate that had been occurring in arriving at the projection that they would have a problem by the end of 1970. Let me show you, as marked at your deposition, Haskins & Sells Exhibit 38, which I have marked as Stock Exchange Trial Exhibit XX and ask if that reflects such a computation.

A This wouldn't be a projection. It was just a question had been raised what would the capital and the AI at 1,500 per cent be. It has no bearing as to projection of capital.

Q When was that question raised, sir? Can you tell from the document or your recollection?

A It looks I have a date of 6/16/70. That's the date I prepared it.

Q Does this show what's required to remain at 1,500

per cent?

A Yes, sir.

Q What does it show in that respect?

A One million four.

Q Is this the requirement solely for Hirsch & Company?

A Yes.

Q At that time I believe you just testified that signals were go for the merger, is that correct?

A Yes.

Q Do you know or were you told why you were computing the capital for Hirsch & Company as a single entity on that date when signals were go for the merger?

A They were only "go" as far as the back office getting together with duPont. That means having the back office people talk to the back office people. The principals were not involved. So that that's the only thing that was go.

You needed several weeks to coordinate and program and move that big document that you see on that desk there from -- that copy, that book there-- to move the customers' accounts, securities, through the omnibus account into duPont's record. That was all systems go, the term that I used before. It had nothing to do with the

capital structure of the firm, what would move, what wouldn't move. Just the records, how could we coordinate the movement of the Hirsch records to the duPont records mechanically without getting involved doing everything by hand.

Q Why did you chose the figure 1,500 per cent to determine what it would take?

A Normally, if you are in excess of 1,500 per cent--as soon as you reach 1,500 per cent the New York Stock Exchange would put you on the alert, so the 1,500 per cent at that time was the governing factor. Now it is down to 10 to 1 or 7½ to 1. You know, it's been changing. The 15 to 1 ratio was -- if you were over that you were on the alert and you would have a problem with the exchange, and they would want you to file various reports, and so forth.

Q Let me show you some other documents and ask you if you can find among them the projection of Hirsch capital against losses to which you referred?

A These two documents, the first two, would be a sheet that I would have prepared which would fix the actual AI and capital, and peg it at a particular point, actual computation. It would show the increase and decreases in aggregate indebtedness and capital. On the other side it would increase and decrease capital. I would go in and

speak to Mr. Kohns if he asked me if we increased capital one million dollars, what would our ratio be. If I increased AI ten million, what would my ratio be. These documents were prepared for that sole reason, at three hundred million of AI and two million capital my ratio would be 1,493.

Q When were they prepared?

A These I would normally prepare on a monthly basis.

MR. BROOKS: Let the record show the witness has been referring to--

A I didn't refer to the back sheet, just the two top sheets.

MR. CAMHY: Tell us the documents you have been showing the witness and asking to comment on.

MR. BROOKS: I will.

MR. CAMHY: This is a little late.

MR. BROOKS: I was interested in having him locate the documents we were searching for.

THE COURT: Proceed.

MR. BROOKS: He was referring to Stock Exchange Exhibit WW, which was Haskins & Sells Deposition Exhibit 27, and Stock Exchange Exhibit BBB, which was Haskins & Sells Exhibit 28.

Q Is the document you now have before you, sir, the document I have been asking you about?

A No.

MR. BROOKS: This is just a moment, Mr. Camhy.

Q Now, Mr. Gariboldi, when were the what has been called the first round of the merger discussions broken, to your recollection?

A I think the first round was broken off when Mr. Ruskin put some article in the newspaper about the merger, and that was about the -- so if you had a copy of the--

Q Right. If I were to tell you that the article in the newspaper is dated April 24, 1970, would that accord with your recollection?

A Yes, sir.

Q Do you know what the combined losses were at Hirsch & Company for the months of January, February and March of 1970?

A I don't remember offhand.

MR. CAMHY: I object. We have had these documents, these P and L sheets--

THE COURT: That's all right. They are here, and they are in evidence already.

MR. BROOKS: I was going to show the witness, and ask to have put into evidence the special operations

questionnaire for Hirsch & Company, which contains in summary form the total for those three months in one place.

Can you identify this, sir?

MR. CAMHY: Working from what document?

MR. BROOKS: Stock Exchange Trial Exhibit F and Haskins & Sells Exhibit 16 at Mr. Gariboldi's deposition.

MR. CAMHY: May we have an opportunity to look at it and study it?

THE COURT: All right.

Q Can you identify that, sir, as the operations questionnaire of Hirsch & Company?

A Yes.

MR. BROOKS: I offer it in evidence, your Honor, and call the court's attention --

MR. CAMHY: Before you do, may I see it?

MR. BROOKS: Look at mine, sir.

(Pause)

VOIR DIRE EXAMINATION

BY MR. CAMHY:

Q Mr. Gariboldi, what is the cover sheet?

A I just looked at it quickly. It looks like my handwriting.

MR. BROOKS: They seem to be two separate documents,

three actually, a cover sheet and letter, and a special operations questionnaire.

MR. CAMHY: Did the witness on deposition identify them all together as one document?

MR. BROOKS: Yes.

THE WITNESS: I only gave you an answer as far as the operations questionnaire. I didn't answer the question on page 1 or 2.

BY MR. BROOKS:

Q Tell me what page 1 is, sir.

A Page 1 is in my handwriting and has a date 6/9/70, 11:15 A.M., Paul duPont. And these were the items I think Mr. duPont wanted from me, and Mr. Kohns or Mr. Mundheim told me Mr. duPont wanted this information: A Hirsch computation, long form, I and E report, income and - expense report, Wright Associate report, leases branch offices, and special operations questionnaire.

MR. CAMHY: Were all the documents in Mr. Gariboldi's file?

MR. BROOKS: Yes.

THE WITNESS: I don't know if the documents were together. This is my covering memorandum.

VOIR DIRE

BY MR. CAMHY:

Q Are you satisfied, Mr. Gariboldi, these are all authentic from your files made at the time, is that right?

A This questionnaire is.

Q How about the two on top? Are they authentic, is that from your file?

A This one on the top is my handwriting. The others look like Hirsch & Company letters.

(Defendant New York Stock Exchange Exhibit F received in evidence.)

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CROSS-EXAMINATION

BY MR. BROOKS:

Q Do you know whether duPont conducted an investigation you conducted of duPont?

A I don't know, sir.

Q Do you know why Mr. duPont requested those documents which are set forth in your handwriting on the first page of Exhibit F?

A I would assume he would want to update his --

MR. CAMHY: Objection. The question is whether he was told, not does he know why.

THE COURT: All right.

MR. CAMHY: He is starting with an assumption, your Honor.

THE COURT: Plus the fact whether they conducted an investigation similar, Mr. Brooks, I don't think that is relevant.

MR. BROOKS: Let me get back to where I was before the objection, your Honor.

I call the Court's attention to the last two items of the operations questionnaire, which appear on the penultimate page of the exhibit, and show a total loss for the first three months of 1970 of $125,000 for Hirsch & Company.

THE COURT: Why don't we take our recess?

(Recess)

CROSS EXAMINATION CONTINUED

BY MR.BROOKS:

Q Mr. Gariboldi, when did you learn that the merger was back on again after having been called off on or about April 24?

A I think I have testified in my deposition there were actually three times this thing, the merger, was on. It was on again after April 21 for a short period of time, and then it stopped. Then it started again in June. I mean I have heard testimony to the effect it was only twice, but there appeared to be another period oftime between April and June.

Q Was it early June that you heard it was on again?

A Yes.

Q Did you prepare the profit, the monthly profit and loss statements at the Hirsch firm?

A It was prepared by an individual under my supervision.

Q About how soon after the month end would you have your report ready for that month?

A The final report would be ready in about two

to three weeks. The final P&L.

Q Would you have a preliminary report available should the partners wish it?

Strike that.

Did you prepare any preliminary reports before the final month end P&L?

A Only if it was requested. Normally we try to get it out within two to three weeks -- two weeks.

Q How soon after month end would you know the P&L for that month?

A We would have preliminary figures around the 10th of the month.

Q During the period of April-May of 1970, were you following your normal schedule getting P&Ls out for Hirsch & Company?

A Yes.

Q Do you recall what the loss was for April of 1970?

A No, sir.

Q Do you recall what thatloss was for May 1970?

A No, sir.

Q We have seen from Exhibit F in evidence,

the combined loss for the first three months was approximately $125,000. If I showed you a profit and loss statement for Hirsch & Company as of May 31, 1970, could you tell me, using those two figures, what the total loss for April and May had been?

A I think the operation questionnaires did not include the subsidiaries, so if this has the subsidiaries you would have to know the subsidiary figures.

Q Let me show you what I have premarked as New York Stock Exchange Exhibit G, which was Exhibit QQQ in deposition testimony. I ask you if you can identify that as a profit and loss statement.

MR. CAMHY: Do you have one for us, Mr. Brooks?

MR. BROOKS: I don't have one for you. You have your QQQ. You have it. I would be glad to show it to you.

MR. CAMHY: Before you show it to the witness could you wait until we find ours?

THE COURT: We are waiting now, Mr. Camhy.

(Pause)

MR. CAMHY: I have it.

Q Can you identify this, sir?

A That looks like the Hirsch & Company P&L.

Q Can you tell me whether it has the subsidiaries in it or not?

A My first reaction -- I was trying to see if there is a notation. I don't see them listed here. It has London, Paris, Vienna --

Q Those are branches, are they not?

A Branches. It's a little difficult for me to tell whether the subsidiaries are in here.

Q Can you tell me the combined loss for the first five months from that document?

MR. CAMHY: Mr. Brooks, am I looking at what you aer looking at? Is this the same document?

MR. BROOKS: I don't know. I believe it is. This is what he is looking at.

MR. CAMHY: Thank you.

Q Can you tell me the combined loss for April-May 1970?

A $973,867.

Q Would I be right in subtracting the roughly $125,000 figure on Exhibit F from this figure you have just read and included in that there was somewhat over a $600,000 loss in April and May of 1970?

MR. CAMHY: What is Exhibit F, Mr. Brooks?

MR. BROOKS: It's in evidence. It's the

figure I called the Court's attention to, the last two items on the operations questionnaire.

Q Would I be right, sir, in doing that?

A No, not unless -- yes, you would be right, depending on what the subsidiaries did. I don't remember whether the subsidiaries were in the operation questionnaire. My first reaction is that they were not.

Q I thought that was your testimony.

A Yes.

Q And then your testimony was that the subsidiaries were not in this.

A It looks like it. I haven't seen that in five years.

MR. CAMHY: May I hear from the witness whether QQQ was in existence prior to July 2, 1970?

THE WITNESS: Yes.

MR. CAMHY: So then this was something you had in the latter part of May or the early part of June, QQQ?

THE WITNESS: We would have had this sometime in June.

BY MR. BROOKS:

Q My lawyer associates have told me, I am not

an accountant, that I subtracted differently.

A It would be the difference of 125, so it would be closer to 850.

Q Am I comparing comparable figures when I do that mathematics?

A For this discussion I would say yes.

Q Does that accord with your recollection for the loss in April and May?

A I said I didn't remember.

Q Do you have any better recollection now?

MR. CAMHY: Don't we have P&L sheets that show the loss in April and May.

MR. BROOKS: Yes, Exhibit G.

MR. CAMHY: Then why do we have to go through the exercise?

MR. BROOKS: Because I didn't know ~~which~~ could compare Exhibit G to an operations questionnaire.

THE COURT: I would appreciate, Mr. Camhy, I know it's getting late and it's a strain, but I would appreciate if you are going to object, object.

MR. CAMHY: I am going to make an objection.

THE COURT: The objection is overruled.

Q Mr. Gariboldi, were you offered a position

at the merged form of duPont, Glore Forgan & Company?

A Yes.

Q Who offered you the position?

A Mr. Sam Gay.

Q What position was it he offered you?

A Controller.

Q Did you accept?

A No, sir.

Q When you made your analysis of the duPont securities differences, did you count on the $20 million capital standby being available to offset those differences?

A No. It would have some bearing, but the differences were there. I didn't know whether the $20 million had been used or not. They were part of the question.

Q The person you spoke with didn't know about this?

A He said he was not aware of the $20 million.

Q Did you discuss the availability of the $20 million standby commitment in respect to the security differences with Messrs. Kohns and Mundheim?

A My discussion was -- these are the security differances, the question of the $20 million is a separate

item. I didn't relate one with the other.

Q Did you consider the securities differences as a possible loss item that would have to be offset by additional capital?

A Yes.

Q Did you return any documents to Mr. Gentile from those which you received through Messrs. Kohns and Mundheim?

A Yes.

Q What did you return to Mr. Gentile?

A The long form questionnaire, and I think -- if I had the right report I would have returned that to him. There are several documents ~~you~~ he wanted back because he said it was his copy and his only copy.

Q And you gave them back?

A I gave them back. I put them in an envelope and he happened to come over one day, and I gave them back to him.

Q Do you know whether Mr. Weil checked up on the operations differences at duPont as you testified earlier was his assignment?

A Mr. Weil went over to duPont specifically. If he looked at differences, I don't know.

Q Did he report to you whether he had or not?

A No.

Q Did anybody report to you whether he had or not?

A No.

Q Did you ever discuss the proposed merger with Mr. Weil?

A Yes.

MR. CAMHY: Objection to the question.

THE COURT: Who is Mr. Weil?

MR. BROOKS: Mr. Weil has been identified in the testimony as the operations partner at Hirsch in charge of their back office.

MR. CAMHY: Is that a correct identification?

THE WITNESS: I made that statement before.

MR. CAMHY: All right.

THE COURT: All right.

Then I think that conversation with him is an appropriate matter of inquiry.

MR. CAMHY: Well, your Honor, Mr. Weil is not here and what you are getting is what Mr. Weil told Mr. Gariboldi. I don't think it has been established that Mr. Weil represented anybody.

THE COURT: Yes, but as I understand it the testimony is he was an operating partner of the firm which was merged at the time and we have plaintiffs here who are two of the partners in the operation who are complaining.

MR. CAMHY: What you are saying is that he was their partner.

THE COURT: An operating partner, he had some responsibility I gather. I don't know. I just assumed that.

He is an operating partner in charge of something, he has some responsibility.

MR. CAMHY: Well, your Honor, I object to it as hearsay. I don't consider it an admission of my client and to the extent that Mr. Weil was a partner of Hirsch & Company I don't think his statements in this connection bind my client. And I object to it.

THE COURT: Well, I think that as an operating partner his knowledge, certainly I am going to assume that what he knew the plaintiffs knew. Proceed.

Q How many conversations about the merger did you

have with Mr. Weil, sir?

A Two or three.

Q Could you separate them in your mind?

A Well, the first conversation with Mr. Weil is when I received the operations questionnaire and discussed with him the security differences. And I think Mr. Weil was present at one of the meetings that I had with Mr. Petrillo, Mr. Kohns and Mr. Mundheim when I went over the questions that I would ask duPont.

Q What did Mr. Weil say at the first meeting when you discussed the security differences?

A Other than the figures appear to be large, larger than Hirsch & Company,that was his only comment.

Q What did he say at the second meeting? Was that with Mr. Petrillo?

A Yes. I don't think there was any comment made by any of the partners of Hirsch & Company, it was my questions directed at Mr. Petrillo, there was no other discussion other than that.

Q Did Mr. Weil say anything at that meeting?

THE COURT: Did what?

Q Did Mr. Weil say anything at this second meeting?

A I don't remember.

Q Was there any other meeting that you had with

Mr. Weil where you discussed the subject of the merger?

A There was a second meeting with Mr. Petrillo and Mr. Lill in June when we were discussing Haskins & Sells counting our securities and how we would have Haskins & Sells coordinate the movement of securities and the IBM tapes to duPont.

Q What did Mr. Weil say at that meeting?

A I don't remember specifically on differences, there was no discussion on differences.

Q Did he say anything about the merger?

A I think he was just there to coordinate the move over and the responsibilities of all the interested parties. The Haskins & Sells, the back office people at Hirsch, the accounting department at Hirsch.

Q Did Mr. Weil ever express to you an opinion about the wisdom of the merger from Hirsch's point of view?

MR. CAMHY: Your Honor, I will renew my objection.

A No, sir.

MR. CAMHY: I have been sed by defendants they intend to call Mr. Weil as part of their case.

MR. BROOKS: Well, if we were to call Mr. Weil I am sure Mr. Camhy would make the same objection that he's made now, that I can't ask Mr. Weil about conversations he had with Mr. Gariboldi.

MR. CAMHY: No you can ask Mr. Weil what he saw --

THE COURT: Mr. Camhy, I have just indicated and I am going to insist on it now, I have really done my best to be patient. But make your objections. I don't want any more of this conversation.

Q Did he ever give such an opinion to you, sir?

THE COURT: I haven't rule d on the objection.

MR.BROOKS: I beg your pardon.

THE COURT: For the record, it is overruled.

Q Did he ever indicate such an opinion to you, sir?

A No.

Q Did Mr. Weil become a partner or a capital contributor to duPont, Glore Forgan after the merger?

A The record speaks for itself. That document that you had in your hand I would assume that you --

Q Can you answer the question yes or no?

A As far as I know, Mr. Weil did not go over to duPont. He did not contribute to duPont.

Q Did you ever tell Mr. Kohns and Mr. Mundheim that the essential question with respect to the merger was whether they thought they could live with the differences?

A It would be a question that had to be resolved before you went into the merger.

Q Did you ever tell him that?

A I think the whole discussion was based on the security differences and the -- and whether there was a 20 million dollar capital contribution that was still available to the firm. That was the basic discussion that we had.

Q And was that question about the differences in the standby commitment raised in context of such a commitment of setting charges for the differences?

A I never made that statement and I don't think it was -- I would ever want to make that statement. Each item stood by themselves. The commitment was on one side, the differences were on the other side. I would never bring one against the other.

Q Let me try to refresh your recollection about the conversation I am inquiring into by reading an answer from your deposition transcript at page 187.

You said at line 7, "I don't think I made a definite statement whether they should go with the firm or not. I don't think I made that type of statement. Just pointed out to them there were differences there and to differences in the back office and that was the area they would have to satisfy themselves, that they could live with the differences that existed based on the special operations questionnaires that we had.

"That appeared to be the problem area."

MR. CAMHY: Objection, your Honor. My objection is that the question was not read, only the answer. I think the question and the answer should be read.

THE COURT: What was the question?

MR. BROOKS: The question begins at the bottom of page 186:

"Q Other than reporting numbers, saying that the shorts were so and so and the longs were so and so, tell me what you told them in the way of that other feeling that they asked for that you might have had about the firm. You know, the assessments that you might have given them."

Then the answer which I read follows.

THE COURT: All right.

Q Does that refresh your recollection on your discussion of the differences as being the key thing Messrs. Kohns and Mundheim had to satisfy themselves about?

A Yes.

Q And is that your recollection now?

A Yes.

Q Do you recall advising them that they had to watch out that those differences didn't affect their P&L after July 2nd?

A Yes, if that document that you showed me, Exhibit

QQQ, or one of those documents that you referred to, a June 6th agreement, I think there was a provision in there that spelled out the differences.

Q I think you are correct, sir.

A It is there.

THE COURT: Mr. Gariboldi, I am not altogether clear. These comments and discussions apparently you had, were they ongoing or did they take place at one particular point?

THE WITNESS: They took place at one particular point and that was the end of it.

THE COURT: And can you tell me when the conversation you just referred to took place?

THE WITNESS: My conversation with Mr. Kohns or Mr. Brooks or which one?

THE COURT: When you indicated that the differences were a matter that they had to be concerned about.

THE WITNESS: That was in my first discussion.

THE COURT: When was that?

THE WITNESS: That would be prior to April 21st.

THE COURT: All right.

Q Mr. Gariboldi, didn't you have more than one discussion with these gentlemen? You have had at least a first discussion,then you have had one with Mr. Petrillo present

and maybe two with Mr. Petrillo present. Isn't that three so far?

A Yes.

Q Any others?

A I would have other discussions as I have received the documents. I didn't receive all the documents on the same day. One day I'd get a special operations questionnaire another time I'd get a long form questionnaire, you know.

Q Would you make comments to Mr. Kohns or Mr. Mundheim as you went about your normal work from time time about the merger and things you found out about duPont?

A Yes.

Q Wasn't the judge correct when he suggested that these discussions were ongoing and not just one discussion?

A They were ongoing for a period of two weeks and that would be the extent of it. Because when the merger talks were off these discussions did not carry on beyond a, I think, a two-week period. I reviewed the March 12, 1970 questionnaire, I would have gotten it sometime in April and everything was called off by April 21st.

So there is only a two-week period of time that the discussions would be going on. It wasn't a lengthy time discussion.

Q What about the time when you received some

information in June that we have looked at? For instance, the May 28th capital computation, would you have updated them on what you received?

A No.

Q Why was that?

A Because we were told to go ahead and coordinate the movement of the back office into duPont at that time.

Q Well, if something material came to your attention that was not contained in your initial report would you have called it to the attention of Mr. Kohns and Mr. Mundheim?

A I would have. If I looked at that questionnaire and if I remembered the figures that you just showed me the figures appeared to be the same the differences were 10 million long and 10 million short. That was that Exhibit C you showed me.

Q To your knowledge did the condition of duPont change substantially between the time of this two-week investigation and in May and late June?

A Other than a million eight loss that I had marked in that capital computation in that last exhibit you showed me.

Q Other than that? Well, did you report on the one million eight loss?

A Yes.

Q There wasn't anything else material that came to your attention, was there?

A No, the figures seemed to be approximately the same.

Q Let me ask you this sir:

At the time of the merger was the net capital that was contributed by Hirsch to duPont sufficient to carry the aggregate indebtedness of Hirsch that was assumed by duPont as a result of the merger?

A If you show me the figures I will answer the question.

Q I don't have the figures. Can you answer it from your recollection?

A Based on that one document that you showed me at 1500 per cent we would have needed probably nine million dollars, eight or nine million dollars of capital and the figure that was reported before was four million four, there would have been a deficit in capital to handle a Hirsch minimum capital and capital charges based on the figures that were quoted before.

Q So that as a result of the merger duPont was taking on a capital charge rather than benefiting its capital position, is that your testimony?

A Based on the figures that were reported here.

MR. BROOKS: I have no further questions.

THE COURT: Ready for cross examination by Mr. Pollack.

CROSS EXAMINATION

BY MR. POLLACK:

Q Mr. Gariboldi, you were the man delegated by Hirsch to investigate and analyze the financial condition of duPont; is that correct?

A I was asked to look at some of the financial statements. The answer to the question would probably be yes.

Q You were given any and all information and documents that you requested of duPont, were you not?

A Yes.

Q You were never given any false information to your knowledge by duPont, were you?

A If the documents I received were false then they were false. If they were not -- if they were correct I received the correct information. Whatever documents I received I had to assume that they were the right information.

Q You know of no falsity in any of the documents or information you received from duPont, do you?

A I have no reason to believe that they were false.

Q You were never given any incomplete information

by duPont, were you?

A I don't know.

Q Were you ever given less than you asked for by duPont? To your knowledge.

A No.

Q You knew duPont had financial and back office problems, did you not?

A Looking at the questionnaire, yes.

Q You communicated that fact to Mr. Mundheim and Mr. Kohns, did you not?

A Yes. Only as far as security differences were concerned. I didn't make any statement about the back office because you know I had no first-hand knowledge of the back office.

Q You knew there was a discrepancy between Mr. Gentile's response about the commitment of standby capital and the answers to financial questionnaire on that subject, did you not?

A Yes.

Q You communicated to the Hirsch partners the fact that there was a discrepancy between what Gentile knew and what the answers to financial questionnaires said, did you not?

A I just told them Mr. Gentile said he was unaware

of the 20 million dollars,that is all I reported back.

Q In other words, you advised them that Gentile said he was unaware and that the financial questionnaire said that there was such a commitment, is that correct?

A Yes.

Q Did you follow up on the discrepancy or difference of viewpoint between Gentile and the answers to financial questionnaire?

A No, sir.

MR. CAMHY: Your Honor, I object to the question of this discrepancy. Mr. Hyde made a comment earlier that it wasn't a discrepancy if the note was read correctly. And I stand on that.

MR. POLLACK: I think Mr. Camhy misunderstands the import of my question, your Honor.

THE COURT: All right.

Q Did Mr. Hirsch, Mr. Mundheim or Mr. Kohns instruct you to follow up and see why Gentile did not know about the standby commitment of capital?

A No, sir.

MR. POLLACK: Thank you, your Honor.

REDIRECT EXAMINATION

BY MR. CAMHY:

Q Just to clarify one point, Mr. Gariboldi.

I think it was clear but I just want to make sure. Hirsch itself was not in capital trouble, the Hirsch Company, in June of 1970, was it?

A No, they were not.

Q So that when Mr. Brooks asked you whether the charges that were absorbed placed a burden, a net burden on capital it was because a lesser number of Hirsch partners went in and put in less capital, is that right?

A If that was the reason, the answer would be yes.

Q But it is only because so many dollars of capital went in and all of it -- or much more aggregate indebtedness went in in the merger.

A Yes.

Q But the Hirsch Company itself was not in any problem about capital compliance?

A No.

MR. CAMHY: Your Honor, that is all I have of the witness.

THE COURT: Do you have something on this cross examination, Mr. Hyde?

MR. HYDE: Yes, I do, your Honor.

THE COURT: All right.

MR. HYDE: It is on this footnote that came out on cross examination after I had concluded.

RECROSS EXAMINATION

BY MR. HYDE:

Q Mr. Gariboldi, the footnote to which reference has been made, footnote 4 of the audit questionnaire as of September 28, 1969 referring to the standby agreement states, does it not, "Copies of such agreement have been filed with the New York Stock Exchange"? Do you have it before you?

A Yes.

Q Did you ever ask the Stock Exchange for a copy of the so-called standby agreement?

A I didn't.

Q Did anybody to your knowledge?

A I don't know.

Q Did you ever have any conversation with Mr. Kohns or Mr. Mundheim to the effect. well, let's go get a copy of the agreement and see what it says?

A No.

MR. HYDE: No further questions.

THE COURT: What are you referring to? I am not clear on that. I am not clear on what you were referring to.

THE WITNESS: Here is the footnote, your Honor, it says footnote 4.

(Handing.)

The last paragraph on footnote 4.

THE COURT: All right. I think that is all, thank you very much, Mr. Gariboldi.

MR. CAMHY: Your Honor, there is just one last thing and it is just for the record.

Mr. Gariboldi, I understand you are not a CPA, is that correct?

THE WITNESS: That's right.

(Witness excused.)

MR. CAMHY: Paul Kohns, please.

P A U L H. K O H N S, called as a witness by plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CAMHY:

Q Mr. Kohns, would you give us something of your background including your education and professional experience. Approximately, first, how old are you?

A I am 74.

Q How old were you in 1969?

A I became 69 in late September.

Q Now would you tell us something of your education?

A I graduated from Collegiate School in New York

and from William College in 1921 with a Bachelor of Arts Degree.

I spent two years in R. H. Macy's executive training course.

Q How did you get that job?

A The Strauses were relatives of mine.

Q Go on.

A I spent a year in Macy's Paris office. And in 1925 I joined a training program at L. S. Rothschild, members of the New York Stock Exchange.

Q How did you get that job?

A Mr.Hocksteder was a realtive of mine.

Q Thank you. Go on.

A I became a partner of Hirsch, Lillienthal & Company in January 1930.

Q Did you make an investment when you became a partner?

A Yes.

Q Was the investment substantial? Do you remember how much --

A My recollection is it was $230,000.

Q In 1930?

A Yes, sir.

Q You put that money in the firm.

A Yes, sir.

Q Did you make that money at Macy's?

A No, I inherited it from my father.

Q Thank you. Go on.

A I spent the rest of my business career with Hirsch, Lillienthal which became Hirsch & Company until we dissolved in July 2, 1970.

Q All right. Now going through the '30s would you tell me what you did at Hirsch, Lillienthal and Hirsch & Company? What was your job? Not your titles, your jobs.

A Not my --

Q Not your titles, your jobs. What did you do?

A I was in charge of the statistical department.

Q What did that encompass? And when were you in charge of the statistical department?

A It was in the year or 18 months after I had joined the firm. I had had most of my training at Rothschild in their research department.

Q So that is securities analysis, is that right?

A That's right.

Q Then the statistical department at Hirsch that is also related to securities analysis?

A Yes.

Q All right. Go on.

A I tended to understudy Howard Hirsch who was the oldest son of the senior partner, and as the seniors died he became the senior partner and I advanced accordingly in responsibilities and duties.

Q When you say understudied Mr. Hirsch, what did that involve?

A Trying to learn the business.

Q Well, my question sir did you have customer relations? Did you have accounts that you handled?

A No. No, I am a very poor salesman.

Q Then what exactly did you do in helping Mr. Hirsch?

A We are going back into the early '30s. I find it a little difficult to answer a question put that way.

Q Did a time come when you stopped helping Mr. Hirsch and went on to some other work in the firm? Let's go backwards. In 1968, '69, at the time of the merger what were you doing? What was your work?

A Oh, Mr. Hirsch gradually dropped the reigns, considered himself what in a corporation would be chairman of the board and I became what I suppose in a corporation would be the president and had responsibility for the whole operation.

Q Well, you weren't the president, Mr. Kohns,

because there was no presidency but did you have a job in the firm? Were you managing the firm?

A Yes.

t4b

Q Thank you.

Did the firm have a back office?

A Yes, a very substantial one.

Q Did you do anything with back office operations? Were you back there at all?

A I had it -- it was my responsibility, the partners looked to me for the correct running of the back office. I had no bookkeeping experience and never acquired any. So I needed an assistant to do the actual managerial job and my function was to make common sense decisions on problems brought to me.

Q Did the firm have accountants?

A Yes. For many years they were Haskins & Sells, and prior to that a small firm whose name at the moment escapes me.

Q Who at Haskins & Sells did you deal with?

A My relations were largely with Mr. Petrillo.

Q Did you see him on important matters?

A Yes, I considered him a valuable consultant and got on very pleasant terms with him and did not hesitate to go to him with problems or suggestions.

Q Did Haskins & Sells do the Hirsch & Company tax returns for the partnership?

A Yes, sir.

Q Did they do your personal tax returns as well?

A Yes, sir.

Q So your personal tax return and the partnership tax return was with Haskins & Sells?

A Yes, sir.

Q Did you consult Mr. Petrillo on matters other than matters relating to your audits?

A Yes. Mr. Petrillo was very sophisticated in terms of Wall Street operations, and I went to him to get impressions of what other houses did to solve certain problems that we might have without asking him to disclose the names of the firms. And he was very useful in that regard.

Q In connection with the tax returns did you get tax advice, that is to say were they just simply filling out the returns or were they giving you advice as to how to keep your taxes lower than they might other be if you couldn't get the advice?

A Yes, most specifically perhaps when we formed our affiliate Hirsch & Company, S.A. and there we got our advice from their tax department and the partner in charge of the tax department, Mr. Petrillo I think sat in at the decisive meetings but he did not consider himself a tax authority.

Q Now, did a time come in the latter part of 1969 and the early part of 1970 when the firm began to consider

the possibility, or the older partners in the firm began to consider the possibility of merging with another firm?

A Yes, sir.

Q Did you consider one or two or three other candidates for the merger?

A We did.

Q In that connection did you ask, when you had one prospect or another did you ask Mr. Gariboldi to get some facts and figures on it?

A I don't remember doing so except in the case of duPont, but it would seem to me normal, which is not really an answer to your question, I suppose, that I would show him the financial data which I received from the firms with whom we were having discussions and ask him to help me analyze them.

Q All right,now you --

A I did the same thing, by the way, with Petrillo.

Q You knew what ratio was, didn't you?

A Yes, sir.

Q You have been in the business a long time?

A Yes.

Q And you knew what back office problems were, didn't you?

A I am afraid so.

Q Did Hirsch have its share of them?

A Yes.

Q In anything like the magnitude that we have been talking about in duPont?

A No, we were in relatively good shape as was proven perhaps by a study made by a business consulting firm who made a comparative study of our operations and the results with that of one of the firms with whom we were considering merger. And I was embarrassed to sit listening to them lecture the partners of both firms at how high we ranked in every respect.

Q Well, getting to your own situation, Mr. Gariboldi, how long had he been with you?

A I think he came to us around 1960.

Q Prior to Mr. Gariboldi had there been somebody like him doing what he did? Financial man, controller?

A No. We were not so highly organized in our bookkeeping department at that time.

Q Did you ever do any of the work yourself?

A No. No. I am not competent to.

Q I gather you were competent enough to ask questions and to know the answers, what the answers meant, is that right?

A Yes.

Q Would you tell the Court chronologically how the duPont thing came up and what happened? At this point I think the narrative ought to be to you. Would you just tell us narratively when duPont first came up and just meetings as you remember them as best you can.

MR. BROOKS: Your Honor, I am going to object to that type of questioning.

MR. CAMHY: Your Honor, I don't want to lead the witness. I think if the witness can just say what happened next --

THE COURT: Well, I will allow it with the hope that the narrative will be succinct.

MR. CAMHY: I am sure it will, your Honor. It is just that I don't want to say did the time come when you met Mr. whatever. You know it should come out of him, not out of me.

THE COURT: All right.

A A number of my partners, knew partners at duPont. Mr. Mundheim knew Mr. Russolo, Mr. Framen knew some partner. Which one opened discussions, I don't know, but I rather think it may have been Latour approaching Mr. Framen on the floor of the New York Stock Exchange. Well, it wouldn't have been on the floor because Mr. Latour was not on the floor.

Q Stop right there. First you apparently were on some kind of a merger -- serious merger quest, weren't you?

A Yes, I had come to the conclusion shared by some of my partners that there was no place in the future of the industry for a firmof our size, that we were large enough to need very extravagant electronic data machinery and the volume wasn't sufficient to support it.

So our feeling was that our choice was to either join a firm substantially larger than we were or to shrink our own operations markedly.

THE COURT: Well, can you tell me when you reached that conclusion?

THE WITNESS: During 1969 when black figures began to disappear and red figures became too prominent.

Q How about the age of Mr. Hirsch?

A He is four or five years older than I am. Four, I think.

Q Didn't he indicate a desire perhaps to retire in the next year or two?

A Yes, he had been showing for some years that desire, but felt that he had an obligation to his partners and to the fact that the firm was founded by his father, not to embarrass us until an appropriate time should come.

Q There was always the question of death, wasn't there?

A There was always that possibility, of course.

Q That would have given you an estate and perhaps the possible withdrawal of that capital, isn't that right?

A Yes. That was oneof the reasons. Not his age, but my own age and the fact that any young man is subject to being hit in the street.

Q Would you go on?

Did you have some good young men?

A Did we have some what?

Q Good young men?

A Yes, we did. But their capital was not as substantial as we would have liked.

Q Was Maurice Meyer pressing you to get his money out?

A No.

Q But he did change from one class to another of investor, didn't he?

A He did at the end of 1969.

Q Did that have some implications to you somewhaet on the horizon?

A Yes, but our decision, or, our thinking towards merger were almost a year old when the time came of which

you are speaking.

Q I see. All right. Well, then, go on. You were talking about that some of the partners at Hirsch knew some of the partners at duPont.

A There was a preliminary meeting of which I have no recollection and therefore feel that almost certainly I did not attend, and I don't know who did attend it, a feeling out as to whether there was any interest.

And apparently interest was shown on both sides. And the next thing I have a clear recollection of was that a meeting was arranged at Mr. Mundheim's home because Wall Street is an excellent rumor factory and if two partners of different houses are seen together he --

Q All right, just get to the event, Mr. Kohns.

A -- there are rumors.

Q His Honor wants you to be succinct. There was a meeting at Mr. Mundheim's home.

A There was a meeting at Mr. Mundheim's house attended by four, I think, of duPont's senior partners and three or four of ours. The subject of the meeting did not go in very much to specific business problems. They were really an attempt to see whether the personalities felt they could live together. And what business discussions there were were brief discussions of the advantages each

house had to give the other.

Q Can you fix the time of this? Was it January, February, March?

A I am sorry, I cannot.

Q Well, let me give you an event to fix it with. There must have been very big publicity attached to the duPont censure for the complaints and the record keeping in the latter part of January, February.

Do you know whether you knew that at that time or whether you learned it shortly thereafter?

A My belief is that I learned it thereafter.

Q But you did learn it?

A Yes.

Q And you learned it some time before the merger?

A Yes.

Q All right. Go on.

A We parted with the idea that Latour would talk to Framen and Latour's report to Framen was that they were interested in pursuing the discussion seriously. And we did.

Q Was it at that point that you enlisted Mr. Gariboldi?

A Yes, it was. Mr. Mundheim asked Mr. Gariboldi to come into his office and asked me to join them as I remember

it and I think the three of us were alone and we told Mr. Gariboldi of why we were asking him to go over and look at duPont, that we were seriously discussing merger and that we were interested in his having a look at their operations and financial condition and give us a report. He came back --

Q Did you ever ask Mr. Norman to do anything like this?

A I have no recollection of so doing. I believe at the time Mr. Norman was on vacation.

Q All right. Go on.

A In any case, I have no recollection of asking him to. Mr. Gariboldi came back with a report which was not encouraging. He spoke of the differences in large figures and he spoke of some figures that he couldnt understand.

Q Did you know then that Haskins & Sells had been the auditors for duPont?

A I believe I did.

Q And had you seen duPont's big brochure annual repport with the Haskins opinion in it? The one with the pictures and all?

A Yes. I think we had that at the time that we spoke to Mr. Gariboldi but I am not sure.

Q Well, at some later time you did. I am not

talking about at this time but some time during this --

A I certainly --

MR. BROOKS: Your Honor, I think that question is leading.

MR. CAMHY: I am only trying to get the time clear, that's all.

MR. BROOKS: Well, let us let the witness do it.

A You are talking about the annual report?

Q Is there an annual report, yes?

A For the year 19 --

Q '69.

A -- '69. Yes, I saw that. I cannot tell you specifically when I saw it. But it was certainly at about the time that we asked Mr. Gariboldi to go over there.

Q All right. Well, Haskins were their auditors, is that right?

A Yes.

Q And Haskins were your auditors?

A Yes.

Q Did that cause you to make any or have any conversation with Petrillo? Let me put it to you this way: Did you have any conversation with Petrillo about it?

A I remember specifically and in considerable

detail one conversation I had when I asked Mr. Petrillo to come to my office.

Q Does that fit chronologically to where we are, that is just after Mr. Gariboldi got into it and came back with the somewhat unencouraging report?

A My impression is that it was after the discussions broke off in Apirl.

Q All right. Then you had better go back to your own narrative.

Mr. Gariboldi came back and he was unencouraging.

A And I think it was Mr. Mundheim gave him the name of a partner over there to see and I believe it was Gentile. I don't remember his coming back and making a report, although undoubtedly he did.

We proceeded with our discussions, but they went rather slowly, and my back office partner Tom Weil came to me one day towards the end of June -- end of April and told me that there were rumors going around the street that we were going to merge with duPont and that it could cause havoc in our back office, people going elsewhere to look for jobs feeling that they might not find a place in the merged firm. And we realized that if a merger was going to go through that it was not going to go through in sufficient time to avoid these rumors being disruptive. So we broke off

the rumors officially.

Q You broke off the negotiations.

A I mean the negotiations officially.

Q That is quote officially close quote?

A Yes.

Q All right, go on.

A I believe the Wall Street Journal carried a story on it. The story was --

Q Well, I don't think the story is of any concern here.

A -- unpleasant and I therefore wrote a memorandum of the monthly statements describing our financial condition as being better than a thousand per cent --

Q Well, we want to get to the negotiations, Mr. Kohns. After the Wall Street Journal article appeared and you broke off negotiations officially, in quotes, what happened next?

A What happened next was I received a phone call one Saturday at home from Mr. Fraiman, who had said he had just been playing golf with Latour and Latour was very anxious to have a talk with me and could they come over.

They came over and we sat down for an hour or so in which Latour showed very real interest in renewing the negotiations, which we did. I don't know how much detail

of the negotiations you wanted to hear. They ended up in agreement.

Q When did Glore come into it?

A When did who?

Q Glore Forgan. That would be a three-way. Was it at this time or later?

A I have only a vague recollection of the answer to that question.

Q All right. Now does the time come when you did discuss the matter with Petrillo?

A Yes. It was at about the time -- the time I am discussing must have been, I suppose, in May, perhaps late in May. And when we had gotten fairly close to an agreement, in other words, where the negotiations had proceeded further, I asked Mr. Petrillo to come in and I asked Mr. Hirsch and Mr. Mundheim to come in and I think Mr. Framen was there. Possibly another partner but I remember Mr. Hirsch and Mr. Mundheim. And I remember clearly that I said to Mr. Petrillo,"Pete, as you undoubtedly know, we are rather close to an agreement to join duPont, what do you think of it?"

And he said, "Paul, if they can get good back office management,"I think he said good management and I assumed he meant back office management,"I think it will be good,"or,

"It will work out well."

And he said, "By the way, Edmond duPont is a man whose word is better than his bond."

Well, I felt a recommendation like that coming from a man whose judgment and knowledge I respected and who was duPont's auditor was a very importing go-ahead signal. And --

Q Now, by this time had you gotten the comments of Mr. Gariboldi about the down side risks in these --

A I believe so, yes.

Q -- and the securities different short?

A I believe so, yes.

MR. POLLACK: I object to the form of the question, your Honor.

THE COURT: Overruled.

Q Do you recall any other meetings -- I think Mr. Gariboldi mentioned a meeting at which he was present with Mr. Petrillo. Do you remember that meeting?

A Not clearly. Rather vaguely I do remember it and I don't remember the substance of it or who was present.

Q Is thereany other event that stands out in these negotiations going up to the closing?

A Well, there was a very h-ctic --

Q Well, let me ask yousomething, how about this

duPont standby. By the time you got to the closing of this thing did you know whether there was a legal commitment in respect of the standby capital for $20 million? Was there a --

A Oh, yes, at the meeting at Mr. Mundheim's home I addressed Mr. duPont and said I would like to ask a question which you may feel you would not care to answers. And he said,"Mr. Kohns, I can't think of any question you will ask me that I am not happy to answer."

And I said, "I understand that your firm has a $20 million standby agreement should you need additional capital."

He said, "That is true. However, we have already used $2-1/2 million of it and there is $17-1/2 million available." I think he mentioned it came from a trust in which I think he said his family was involved. And then I thanked him and said, "Mr. duPont, I would like to ask one other question which also you may feel is out of order," and he said, "Please do."

And I said, "In the unlikely possibility that the firm should need more capital than this standby agreement, what plans have you for achieving more capital?"

And he said,"Mr. Kohns, I can only tell you that I have never come back from Wilmington empty-handed."

Q Hadn't you been told by ohters however that this agreement did not exist?

A Had I?

Q Yes.

A Oh, no.

Q Had you been told by Mr. Gariboldi that there were people at duPont who denied that there was a legal agreement to that effect?

A No. Not to my recollection.

Q Tell us what wenton from there?

A Well, we decided that the only feasible way of achieving a merger was at a weekend because of bookkeeping problems and we were coming towards the 4th of July which furnished a long weekend which was ideal for the purpose and we decided that if we were going to merge it had to be done that weekend or probably never because another month's delay would revive the rumors. So there was a meeting lasting quite late into the late evening or night at duPont's lawyers,Sheldon Stewart's office,attended by Fraiman,Mundheim and myself, I think we were the only three partners there, two partners of Guggenheim & Untermeyer, Mr. First, and Mr. Taikovsky, one lawyer partner of duPont, Mr. Speicher -- he was not the lawyer partner - a partner of Sheldon Stewart, I don't think Stewart himself--

t5a pm

Q What was the purpose of the meeting?

A I am sorry?

Q What was the purpose of the meeting?

A To close up the final open ends, and it was at that meeting that the only -- when the meeting was about over I was asked the question "Mr. Kohns, is there anything -- are there any liabilities that you have that we should know about and that you haven't told us about?"

And I said, "Yes, there are two. One is that I have promised our head bookkeeper, who has been with us 50 years, to give him a 2-year severance pay, and I will not allow duPont to assume that obligation, I want Hirsch to pay that, and the other is this underwriting" where there was, I believe, a group action on some property. It was mentioned here. I think Mr. Norman mentioned it when he was talking about the omnibus account. Some property, a realty deal. Revenue Property Associate.

We were quite a small member of the underwriting group, our corporation was, Hirsch & Co., Inc., but there had been some sales which, if it needs explanation --

Q No, no, let's get to the events following the merger.

Do you recall that after the merger there were requests or demands on you as a duPont Glore Forgan partner

to try to increase the capital of the firm?

A On me specifically?

Q No, on all of the partners.

A Yes. It became clear that the firm needed additional capital, and the weekly meetings of the Finance Committee, of which I was a member, devoted itself largely to that problem.

Q And this started to become something more and more insisting, did it not?

A Oh, yes. Until the time came that I think it was agreed between the Stock Exchange and ourselves that Mr. Lill would devote -- I believe it was his full time -- to living with the organization to report to both sides, and report progress, which indicated the seriousness of the situation.

Q Prior to the merger, had anyone disclosed to you that as at the last audit date, the previous audit of duPont, that Haskins had computed a ratio of capital which was substantially in excess of the allowable ration?

A No. The only mention I heard of AI, of duPont's AI was at that meeting at Mr. Mundheim's home at which I believe we exchanged our respective figures, and my recollection is that duPont said his was 1600 per cent.

Q Had you been told about a 3500 computation on the audit?

A Not until you told it to me a few weeks ago.

Q Secondly, didyou know that the Exchange had imposed additional capital charges, raising the ratio into totally unacceptable numbers, tens of thousands, 70,000, the ratio on the audit date?

A No. I knew the Exchange was pressing, and I knew that they had asked for assurance that within a certain time $5 million would be found, and Mr. duPont had promised to bring it, by letter.

Q But did you know about a ratio of 76,000?

A Never, until youtold me.

Q Did you know about a $17 million deficiency?

A No.

Q Did you know that securities differences had been sold. The proceeds used to put into capital of approximately $6 million?

A No. I knew --

Q Did you know any of those things?

MR. BROOKS: I want the witness to finish the answer before the next question interrupts him. I think it might be instructive to us all.

A I knew as a result of the meetings where the pressure was on us to raise capital --

Q I am talking about prior to the merger,

Mr. Kohns.

A Oh. And what was the last question on that?

Q Mr. Kohns, can we now go back. I am asking you whether you knew, first, that on the audit prior to the merger the Haskins & Sells ratio as computed by them was approximately 3,200? Did you know anything like that?

A No.

Q I am next asking you whether you knew that prior to the merger and before the negotiations started that previous December the Haskins & Sells 3200 ratio was re-examined by the Exchange and that the Exchange found it to be well into the tens of thousands?

A No.

Q Did you know that the Exhhange prior to the merger had found a capital deficiency of approximately $17 million?

A No.

Q Did you know that the firm had taken securities which it had found in its long differences and used it and sold it and used the proceeds to be put into capital?

A No.

Q Did Mr. Gariboldi ever tell you anything like that? Did he ever tell you those things?

A No.

Q Isn't it a fact that you learned many of them in the

course of this litigation?

A Yes. I learnt them first perhaps from a published report by the House of Representatives of the United States, which issued a report that showed some of these continuing horrible figures.

Q Following the merger, and following the period of crisis in which they were trying to raise this money -- now I am going to September of 1970 -- did a time come after that September when you were asked to subordinate, or, first, did you seek to withdraw your capital from duPont?

A Yes. I gave notice early in Decmeber of my intent to withdraw at the end of the year, as called for in our agreement.

Q Your contract contained certain protections for you, didn't it?

A Yes.

Q And one of them was a right of withdrawal after about six months? wasn't that right?

A Exactly.

Q Another was that to the extent possible or identifiable losses attributable to the period prior to the merger would be passed on to the other duPont partners and not to you, isn't that right?

A I don't believe there was the hedge clause you added.

There was a straight agreement we would be responsible for such losses as occurred during the period that we were partners.

Q That is right. Okay.

Now, the time came in that December when you did seek to withdraw, is that right?

A Yes.

Q But instead you subordinated, you permitted the money to remain in the new firm which was reorganized by the Perot interests?

A That is right.

Q Do you remember there were substantial capital demands made upon the firm at that time for refinancing?

MR. BROOKS: I object to leading questions. That is the second one.

Q Can you tell me the circumstances which attended that time?

A I was asked to go to a meeting at Mr. Fuld's office, at which Mr. Mundheim, Mr. Howard Hirsch and I were present. Mr. Haack and Mr. Lasker of the New York Stock Exchange --

Q Could you tell us who Mr. Haack was, and who Mr. Lasker was?

A Mr. -- they were the two senior officers of the Stock Exchange.

I have an impression that Mr. Haack was the paid president, wasn't he,and Mr. Lasker chairman of the board. That is my impression.

Q First, was your attorney at that meeting?

A Mr. First and Mr- Fuld were both there.

Q As a result of the meetings held at that time --

THE COURT: When is that time?

MR. CAMHY: December of 1970, or late November 1970.

A No, it was in December. It wasn't in late November.

Q Early in December, did you agree to subordinate your interest, to take subordinated debt for your interest?

A Yes.

Q Later were you issued the subordinated debt? Did you receive the instrument of subordinated debt?

A Yes.

Q And thereafter were you paid -- first, did you get some cash at that time?

A No.

Q Were you paid anything on the subordinated debt?

A Interest. Yes, interest.

Q Did you receive a principal payment on the subordinated debt?

A Yes, under the subordination agreement I was en-

titled to receive 25 per cent of the total amount on July 1st, I believe it was.

Q Did you get that 25 per cent?

A I did.

Q Thereafter, did you get any more?

A Capital?

Q Yes.

A No.

Q Ultimately, did you receive a disclaimer of that obligation?

A Yes.

Q Ultimately, did litigation arise from it?

A Yes.

Q And was that litigation settled?

A Yes.

MR. CAMHY: Your Honor, I am going to stop at this point. I would like to put in the details of the litigation and the subordinated debt through another witness, so I submit the witness for cross examination.

MR. HYDE: May we confer for a moment?

(Pause.)

THE COURT: You don't have to take so many documents, Mr. Brooks. You only have five minutes.

MR. BROOKS: I want to be able to give out copies, if I need to.

MR. HYDE: Your Honor, if I may, just before we adjourn, I have selected the entries from the Hirsch & Company partnership tax returns upon which we relied. Perhaps this could be marked as the next Haskins & Sells exhibit number.

(Defendant Haskins & Sells Exhibit V was marked for identification)

MR. HYDE: I offer it in evidence. I represent all the figures are contained on the two tax returns except the bottom line which is a simple mathematical addition of the three plaintiffs' interests.

THE COURT: Why don't we for the five minutes allow -- I will rule on it on Monday, and allow whatever objections to be voiced.

MR. HYDE: I offered it now so there would be an opportunity to consider it over the weekend.

CROSS-EXAMINATION

BY MR. BROOKS:

Q Mr. Kohns, before you started on that long

career in business and the securities industry, did you have occasion to attend college?

A I believe I mentioned I graduated from Williams in 1921 with a bachelor of arts degree.

Q I am sorry, I might have had that, sir.

When did you become the managing partner of Hirsch & Company, or Hirsch Lilienthal, whatever the name was called at that time?

A In 1943 or '44.

Q Can you be a little bit more specific than you were on your direct testimony about the duties of the managing partner at that time, and if they changed?

A The duties I assumed at that time was partner in charge of the back office operations. Because the partner who had been in charge resigned to enter a different business, a different kind of business.

Q At that time in 1943, was there a required capital ratio under the exchange's rules that firms such as Hirsch & Company had to comply with?

A Yes, I think there was.

Q Was that compliance within your general jurisdiction as the managing partner in charge of the back office?

A Yes.

Q How long did you continue in the post of managing partner of Hirsch & Company?

A My duties actually expanded. I never ceased to be. I simply assumed other duties on top of that, and I left the ~~first~~ firm still with the title of managing partner, and the meaning of the term perhaps changed.

Q You testified at your deposition at page 7 that you gradually became the senior partner in fact if not in name and when you becmae that in fact you were the center for decision making.

Can you tell me when that status was obtained, as senior partner in fact and the center of decision making?

MR. CAMHY: May I hear the entire question, please? It seems to be quoting from something.

MR. BROOKS: I was trying to summarize it without quoting it.

THE COURT: Read it back.

(Record read)

A There was no clearcut date. It was perhaps a gradual process, and my best recollection would be between the years 1965 and 1968.

Q Did you during those years supplant Howard

Hirsch from the position of senior partner in fact and decision making?

A Yes.

THE COURT: Mr. Brooks, finish the thought and then we will adjourn, whatever area you are on.

MR. BROOKS: This would be a general breaking point, your Honor.

THE COURT: All right. Thank you very much.

We will adjourn until --

MR. HYDE: Your Honor, may we inquire who the further witnesses will be for the plaintiff?

THE COURT: Why don't you inquire into that a little later after we adjourn.

Adjourned until Monday at 10 a.m.

(Adjourned to June 23, 1975, at 10 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Alexander Norman	502	516	559 569	564 570
Frank Gariboldi	572	586	683	685
Paul H. Kohns	686	715		

EXHIBIT INDEX

Plaintiffs	Identification	In Evidence
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Defendant New York Stock Exchange		
C1		545
QQ		644
SS		650
G		660
Defendant Haskins & Sells		
S, T	615	
V	715	

Howard C. Hirsch, et al.

v. 72 Civ. 775

Haskins & Sells, Inc., etc., et al.

New York, New York

June 23, 1975
10:00 a.m.

- - -

(Trial resumed.)

- - -

P A U L L. K O H N S, resumed.

MR. POLLACK: If your Honor please, I would like to make a brief correction for the record. Counsel for al parties have stipulated to the correction of a typographical error in the record. At page 681, line 12, my question to Mr. Gariboldi was:

"Q You were given any and all information and documents that you requested for duPont Company, were you not?"

The readin that I have just given would correct the word "annual" to "any and all"."

Thank you, your Honor.

MR. HYDE: Your Honor, I have one other preliminary. At the close of the session on Friday I had marked for identification excerpts from the firm partnership tax returns for 1969 and 1970, Haskins & Sells Exhibit V for identification. I offered that in evidence. It was to

be checked over the weekend by the plaintiffs.

I now renew my offer. And I also offer at the same time the tax returns for Haskins & Sells Exhibits Q and R.

MR. CAMHY: No objection.

THE COURT: All right.

xx (Defendant Haskins & Sells Exhibit V was received in evidence.)

CROSS EXAMINATION (Continued)

BY MR. BROOKS:

Your Honor, I have some corrections as well and they are significant because they deal with exhibits which I will be questioning on this morning.

During my cross examination of Mr. Gariboldi we identified New York Stock Exchange Exhibit F and then I offered it and I believe it came into evidence at page 660 of the transcript. However, the parenthetical at the bottom of page 660 says that Stock Exchange Exhibit G was received in evidence and up to that time in the transcript Exhibit G had not yet surfaced. So I suggest that the parenthetical at the bottom of page 660 of the transcript should show that Exhibit F was received.

MR. CAMHY: Consented to.

MR. BROOKS: Thereafter Exhibit G was discussed.

There is no indication in the transcript that Exhibit G was offered so I now do so.

Exhibit G is identified in the transcript by Mr. Gariboldi as the profit and loss figures for Hirsch & Company as of May 31, 1970. If you will recall we had a good deal of discussion about that on Friday. I think the record shows that it was not offered and I do offer it now.

MR. CAMHY: Was it identified?

MR. BROOKS: Yes, it was.

MR. CAMHY: All of them were identified, weren't they?

MR. BROOKS: Yes, but this was questioned on.

THE COURT: All right.

XX (Defendant Stock Exchange Exhibit G was received in evidence.)

MR. SPINOGATTI: Your Honor, one more detail before we start.

On Friday during Mr. Norman's direct examination we had that large book which had been premarked as Plaintiffs' Exhibit 260. I have copied the first page showing the balance and I now offer Plaintiffs' Exhibit 260 into evidence.

MR. HYDE: No objection.

MR. GILLESPIE: No objection.

THE COURT: All right.

xx (Plaintiffs' Exhibit 260 was received in evidence.)

MR. BROOKS: During my cross examination of Mr. Kohns this morning, your Honor, I will have occasion to rely on certain exhibits which I have copies of. To whom should I give the best copy? The clerk or the witness? I would think this would be the one that should be marked.

THE COURT: All right. We will mark it, and I suppose if you give it to the witness, the witness will be the one that has to read it.

MR. BROOKS: I think he can read all of these except some newspaper articles which were photostated and perhaps when we get to those we can exchange them.

xx (Defendant New York Stock Exhcnage Exhibit U was marked for identification.)

Q Mr. Kohns, when do you recall that Mr. Mundheim joined the firm of Hirsch & Company?

A I think 1936 but I am not at all sure.

Q Let me suggest to you that he testified, I believe, he joined the firm in the early '50s. Does that coincide with your recollection?

A I will accept his recollection rather than my own.

Q What duties did he pursue after the first year or so of his being a partner at Hirsch & Company?

THE COURT: Who is this? I am sorry, Mr. --

MR.BROOK:S Mr. Mundheim, one of the other plaintffs.

THE COURT: All right.

A He was the partner in charge of foreign operations and branch offices and worked closely with me specializing perhaps in back office operations.

Q Would it be fair to say that in that area the back office and running the office generally you and he worked as a team?

A Yes, it would.

Q Do you recall when Tom Weil joined the firm?

A No.

Q Would it be in accord with your recollection if I suggested that he joined the firm in 1965?

A I really have no clear recollection of it. I would not find any difficulty in accepting that date.

Q In any event can we say that he had been at the firm for more than three years prior to 1970?

A Quite certainly.

Q And during those three years what were his duties?

A He was the back office partner.

Q Who hired Mr. Weil?

A Mr. Mundheim and I.

Q Rather, who recruited him since he was a partner?

A Mr. Mundheim and I.

Q What was his background, do you recall? Before he came to Hirsch.

A He had been one of our employees many years previously, as I recall it, as a margin clerk. Just prior to coming to us he was managing the back office, whether as an employee -- I think it was as an employee rather than a partner at -- the name of the firm escapes me.

Q When you recruited him as a partner did you do so with the idea that he would take over the responsibilities of the back office?

A Yes. My hesitancy was due to the fact that I still have the top responsibility.

Q That is a responsibility that is required of one partner o one voting stockholder at a New York Stock Exchange member firm, is it not?

A I don't know.

Q Were you aware that New York Stock Exchange

Rule 342 required one person in each firm to be designated as the head of the firm? Speaking in terms of substance and not --

A I wasnot so --

Q Whether you were aware or not it was you who was so designated at Hirsch & Company, was it not?

A In respect to the back office or --

Q No, in respect to the whole firm.

A No, Mr. Hirsch was for many years.

Q I am talking about in 1969 and 1970.

A I was in fact when -- I don't believe there was any designation.

Q Well, who signed all of the written submissions of the firm to the Stock Exchange or the Securities and Exchange Commission or other regulatory bodies to whom you were required to report?

A I believe I did.

Q And you indeed have signed Stock Exchange Exhibit F, have you not, which is the Hirsch special operations questionnaire for the month ended April of 1970? I show you the signature page there (handing).

A That is my signature.

Q Yes. And do you recall signing similar reports from time to time as they were required?

A Yes.

Q When you did sign such reports did you believe them to be true and accurate?

A Yes.

Q Do you know of any misstatement that you have ever made in a written report to a regulatory body?

MR. CAMHY: I object to that, your Honor.

THE COURT: I think that is too broad.

Q Do you know of any misstatement which you have made in any written submission such as Exhibit F to the New York Stock Exchange?

A Yes.

Q Did you know it was a misstatement at the time you made it?

MR. CAMHY: Objection, your Honor. Let us find out what it is first.

MR. BROOKS: Your Honor, I believe I should be permitted to conduct my examination in my way and not Mr. Camhy's.

THE COURT: All right. You may answer, Mr. Kohns.

A Would you repeat the question?

THE COURT: You said you were aware that you

had made a misstatement and the question is did you know it was a misstatement at the time you made it?

A No, I did not.

Q Mr. Kohns, who actually prepared reports such as Exhibit F, specid operations questionnaires of Hirsch & Company?

A The IBM department.

Q Would Mr. Gariboldi play any role in that preparation? Let me show this to you. Perhaps it will help you (handing).

THE COURT: Now we are referring to Exhibit F.

MR. BROOKS: Yes, sir, and only Exhibit F.

A I believe so, yes.

Q Did you rely on Mr. Gariboldi to provide accurate figures for such reports?

A Yes.

Q Did Mr. Weil also play a hand in preparing reports such as Exhibit F?

A I believe they were passed to Mr. Weil before they came to me. I am not sure that that is true.

Q I note that his signature is below yours on the last page. Does that indicate to you that he played at least some role in supplying data for this form?

A Yes, it fits with what I have just said to you.

Q Did you rely on Mr. Weil to provide true and accurate information for Exhibit F?

A Yes.

Q Would the same be true for other forms which contained operating information about Hirsch & Company?

A Yes.

T1B

Q Mr. Kohns, what year is the first year that you can remember during the years that you were at Hirsch & Company that the firm had an operating loss?

A '69 is the year that occurs to me. I think there may have been one previous year in the '30s perhaps.

Q During the depression?

A Yes. There may have been, I am not sure that that is true.

Q Do you recall what the loss was for 1969?

A Approximately a million nine.

Q Let me show you a copy of Haskins & Sells Trial Exhibit Q. I call your attention to the loss shown on the front of that page which is the 1969 partnership income tax return, and ask you if that refreshes your recollection as to the amount of the 1969 loss (handing).

A I don't understand tax returns well enough to-- it is a greater loss than I stated, but the explanation for the difference I am unable to give you.

Q Did you sign the tax return submitted by the partnership to the Internal Revenue Service?

A I believe so.

Q Did you understand them in their basic substance when you did sign them?

A I really don't know how to answer that question.

I depended on the accuracy of the figures as presented to me. I asked a few questions. I am unable to analyze the tax return.

Q Well, if a loss shown on the tax return that was submitted to you showed approximately two million seven and you believed it to be one million nine would you have asked a question about that?

A Yes.

Q Do you recall asking that kind of question in respect to Haskins & Sells Exhibit Q when it was presented to you to sign?

A No.

Q It does show a loss of approximately two million seven, doesn't it, sir?

A Operating loss it says.

Q Well, that's what my question was.

A It says ordinary income loss. Now those words may be significant.

Q Do you recall what your interest in the firm was in 1969?

A My interest changed every year, and it was between 15 and 19, 19 and a half per cent.

Q Do you recall how much of the 1969 loss was borne by you?

A I believe it was $375,000 approximately.

Q Let me show you a schedule which is part of Haskins & Sells Exhibit 2 and see if that helps to refresh your recollection. I call your attention to the second column on the schedule showing the loss, or portion of the loss borne by each of the individual partners and ask you if that refreshes your recollection (handing).

A Yes, but I call your attention to a figure of $373,000 there.

Q In the column headed "Net earnings from self-employment"?

A Yes.

Q What does that mean to you, sir?

A I don't know.

Q May I see it? Doesn't it mean that the ordinary income loss of $445,678.06 shown in the first column opposite your name was then reduced by the draw which you had against earnings or losses and that the column to which you refer, net earnings from self-employment, reflects that setoff against it?

A In part, but I don't think my drawings were that big.

Q Who was Maurice Meyer, sir?

A He was one of the senior partners.

Q Do you recall what the size of his interest was in 1969?

A It was very little less than my own.

Q Would that mean then that his share of the loss was approximately equal to yours?

A Yes.

MR. BROOKS: Your Honor, I call the court's attention to the ordinary loss shown for Mr. Meyer of $444,221.12 on Exhibit Q.

Q Mr. Kohns, was the loss attributable to you for the 1969 year of concern to you?

A Yes.

Q Was it of concern to Mr. Meyer?

A Yes.

Q Did you have a discussion with Mr. Meyer about the 1969 losses?

A Yes. With all partners.

Q Did Mr. Meyer remain a partner after 1969?

A He changed his status from general to limited. And a subordinated lender.

Q After becoming a limited partner and subordinated lender would future operating losses be attributable to Mr. Meyer?

A No.

Q Would his withdrawal as a general partner mean that those who remained as general partner after January 1, 1970, would bear his share of the losses if there were any losses?

A It had to be distributed, yes.

Q Among the remaining partners?

A Yes.

Q There were no new general partners after January 1, 1970, were there?

A Yes, there were, two I believe.

Q Who were they?

A Marshal Spector --

Q What was the size of Mr. Spector's interest?

A He contributed a stock exchange-- New York Stock Exchange seat which he owned and some capital in the fifty to a hundred thousand dollar range.

Q In percentage terms what would be the share of his interest?

A Rather small. I don't really remember.

Q About a per cent or so?

A Oh, more than that I should think. Maybe two or three per cent.

Q Mr. Meyer was roughly 15 per cent, wasn't it?

A Yes.

Q When Mr. Meyer withdrew as a general partner as I understand it he requested the right to withdraw as a limited partner during the 1970 year should he not approve of any merger that the firm decided to enter into. Did you have a discussion with Mr. Meyer about that provision that was inserted into the partnership agreement?

A Yes.

Q Did he explain to you why he wanted that option?

A Because he might not approve of the merger we might make.

Q Did he have reference to any particular merger that had been proposed?

A No.

Q Do you recall, sir, the operating loss for the first three months of 1970?

A A figure of something over $300,000 comes to my mind, but I am not at all sure that that's correct.

Q I don't believe it is, sir. Let me show you Stock Exchange Exhibit F again, and I call your attention to the last entry which shows the loss for the first three months of 1970 (handing). And I ask you if that refreshes your recollection.

A Yes.

Q What is your recollection now?

A This figure shows 125,000.

Q Did you think that was significant at the time?

A No.

Q You did not. Do you recall what the loss was for the months of April and May of 1970?

A No. I recall the six months, or of some approximation of recollection of the six months but not of those two.

Q Do you recall Mr. Garibaldi's testimony on Friday where he compared Exhibit F and Exhibit G and told us that the loss for the months of April and May was approximately $850,000?

A No. It was rather hard to hear in the back of the room.

Q You did not hear that?

A I don't recall hearing it.

Q Let me show you Stock Exchange Exhibit G, particularly the last page which I will represent to you on the copy that is marked in evidence, shows in the upper right-hand corner that it is for the period ending May 31, 1970. I call your attention to the $900,000 loss figure in the bottom right-hand column of that page and I ask you if that refreshes your recollection on the loss that the firm of Hirsch & Company had taken at the end of May, 1970 (handing).

A I am not clear. You asked him about April and May --

MR. BROOKS: April and May.

THE COURT: Is this the loss for five months--

MR. BROOKS: Yes, sir.

THE COURT: Or for two months.

MR. BROOKS: It is for five months and you determine for April and May by subtracting Exhibit F from Exhibit G, as Mr. Gariboldi does for us.

A I recall this figure. I thought it was six months. The figures are five months.

Q Do you recall being startled by the losses that the firm incurred in April and May of 1970, sir?

A Yes, they were a matter of concern.

Q Did you make any calculations or judgment when the firm was in May running at a rate of loss greater than in 1969?

A I don't recall thinking of it in those terms, no.

Q What terms did you think of it in?

A That something had to be done to either reduce the overhead or to make a merger which would put us in a position to more than break even.

Q Did the loss figures for April and May spur you on to greater efforts to make a merger?

A No, we had been working on the idea for 15 to 18 months.

Q And that was at the same pace, with the same concern?

A It was our realization that a firm of our size needed more volume to support the expense of electronic equipment that we needed.

Q And those efforts did not increase or become any more strong after April and May's loss figures were in, did they?

A No, the volume of the exchange did not expand.

Q I am talking about your efforts to find a merger partner.

A Oh, I'm sorry. I misunderstood your question.

Q Well, now, as you understand it can you answer it? Did you seek any harder to find a merger candidate after you got the results on the $850,000 loss in April and May of 1970?

A No, I don't believe so.

Q Did the loss for 1969 erode the capital of Hirsch & Company for purposes of exchange Rule 325 to the extent of its amount, two million point seven?

A I lost the beginning of the question.

Q Let me do it again, it wasn't too eloquent. Did

the loss, the operating loss for 1969 diminish the net capital available to Hirsch & Company in the amount of the loss? In other words, at the end of the year did you have 2.7 million dollars net capital then when you started?

A Yes.

Q Now, in addition to the operating loss in 1969 was there any other decrease in the net capital available due to declining market?

A I presume there must have been, yes.

Q Mr. Kohns, isn't it a fact that the firm of Hirsch & Company lost about a million dollars in net capital due to the erosion of the firm's securities and trading positions during the market decline of 1969?

MR. CAMHY: I would like the time fixed a little better, your Honor, because as I understand it he is talking about losses in a certain two or three-month period and the question is whether the decline in market further eroded capital.

THE COURT: No, he is in 1969. Those questions related to 1970.

MR. CAMHY: Oh, excuse me, all right.

T2a

Q Do you understand my question, sir?

A I would like to hear it again, if you don't mind.

MR. BROOKS: Mr. Reporter.

MR. CAMHY: Perhaps my objection is to the word "further." He said "did it further erode capital" and I thought he said the losses eroded capital and the market further eroded capital and one preceded the other.

THE COURT: I think it is clear. He was talking about a $2,700,000 operating loss that was effectuated in 1969, and he is now asking about a net loss that was due to the erosion of stock.

MR. CAMHY: I understand, your Honor. Thank you.

(Question read)

A I am surprised. If that were true, I am surprised to hear it.

Q I don't want to suggest something that is not true.

A I don't recall that.

Q Do you recall in 1969 that stock prices were going down rather rapidly?

A Hirsch & Company owned practically no stocks.

Q No stocks at all?

A Practically none.

Q In its net capital computation under Rule 325 did it rely on securities values to obtain net capital

value of anybody?

A Subordinated accounts had common stocks, and they undoubtedly declined in a declining market and that would have affected the net capital.

Q The capital available to the firm?

A Yes. Those were not Hirsch's securities.

Q But it was securities upon which Hirsch relied to claim net capital credit, were they not?

A Yes.

Q Do you recall the decline in value that was attributable to such securities during 1969?

A No.

Q At the end of 1969, do you recall having concern for maintaining compliance with the exchange's net capital rule?

A Yes.

Q Do you recall at the end of 1969 restating the accounting basis on which Hirsch & Co. carried its investment in its corporate affiliates from cost to equity?

A I recall doing that for one of our subsidiaries, S.A.

Q Do you recall whether that restatement helped the net capital position of Hirsch & Company?

A I believe it did to the extent of about two million

dollars.

THE COURT: By restatement you mean recalculation?

MR. BROOKS: By restatement I meant that prior to the end of 1969 they had carried their interest in the corporate affiliates on their books at cost, and at the end of 1969 they restated that interest, carried it on their books as equity, and by that accounting change increased their net worth to the extent Mr. Kohns has testified.

MR. CAMHY: Is there any suggestion the equity wasn't there, Mr. Brooks?

MR. BROOKS: You will have to ask that on cross-examination, Mr. Camhy.

Q Mr. Kohns, did that incease to net worth increase the net capital available to Hirsch & Company under Rule 325?

A Yes.

Q Do you recall that Hirsch & Company incurred some censure -- and I am talking about censure in general terms, not the specific term -- from the New York Stock Exchange in the spring of 1970 in respect to the condition of Hirsch's net capital ratio?

A Yes.

MR. CAMHY: Objection to the word censure, because

in this case censure has a specific meaning and I don't think the distinction is general or specific. It is a formal censure or not.

MR. BROOKS: Criticism.

THE COURT: He has already answered the question.

MR. CAMHY: I move to strike it. The question is criticism.

THE COURT: All right.

Q You recall that, do you not, sir?

A I recall a letter from the exchange calling it to our attention, yes.

Q Would you take a look at the pile of exhibits you have in front of you for Exhibit X. Tell me whether you recall receiving Exhibit X on or about the date it bears.

A Yes, sir.

Q Take a look at the bottom of the first page there.

A It reads "However, we feel the organization should reflect at this time on this ratio the vulnerability of a capital violation when such exceeds the guideline of 1,500 per cent and the fact that steps must be maintained to keep the ratio within safety margins."

Do you recall feeling vulnerable to a net capital violation in the spring of 1970, sir?

A This letter certainly made us aware of it.

Q Take a look at Exchange's Exhibit Y, sir. Did you have occasion to discuss Exchange Exhibit Y with the New York Stock Exchange examiner shortly before receiving Exchange Exhibit X?

A I don't specifically recall the discussion, but it was normal when the stock exchange sent in their men to look over our condition for them to have a conversation with me before leaving.

Q And they had that conversation with you because you were the spokesman for the firm in these matters, were you not?

A Yes.

Q Can you tell me what Exchange Exhibit Y is, sir?

A It is a report on a visit of stock exchange examiners.

Q Do you recognize Exchange Exhibit X to be commenting on the results of the examination reflected by Exhibit Y?

A Yes.

MR. BROOKS: Your Honor, I offer Exchange Exhibit X and Y in evidence.

MR. CAMHY: Is there any showing, as the witness has said, that he has ever seen Exhibit Y before?

MR. BROOKS: You heard the testimony.

mdh6 Kohns-cross

MR. CAMHY: I didn't hear the witness testify he received Exhibit Y. He said he only remembered it was the practice of examiners to speak with him before leaving.

MR. BROOKS: He said he believed that Exhibit X was commenting on and referring to Exhibit Y.

MR. CAMHY: That is only because--

THE COURT: Why don't you discontinue this argument?

MR. CAMHY: I object to Exhibit Y.

THE COURT: You can easily satisfy your objection by asking Mr. Kohns.

MR. CAMHY: Do you recall having been shown Exhibit Y before today?

THE WITNESS: Yes, sir.

MR. CAMHY: The report. Not the letter, the report. Not the March 17th letter but the report that is Exhibit Y.

THE WITNESS: Whether I recall having been shown it?

MR. CAMHY: Yes. Did you get the report? The letter indicates that you did. Do you believe that you did?

THE WITNESS: I have no clear recollection of it, no.

MR. CAMHY: Thank you.

THE COURT: Well?

MR. CAMHY: Your Honor, I withdraw my objection.

The letter indicates that he did. He doesn't have a clear recollection.

(Defendant New York Stock Exchange Exhibits X and Y received in evidence.)

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THE COURT: I am assuming no one else has any objection.

Q Mr. Kohns, would you proceed further in the pile of exhibits in front of you to Exhibit Z.

Exhibit Z consists of a letter purportedly bearing your signature, and an attached memorandum which appears to be addressed to you, sir. Do you recall sending the letter which is the first page of Exhibit Z?

A I am unable to find Exhibit Z.

Q Right here (indicating).

A And your question was--

Q Do you recall sending the letter which is the first page of Exhibit Z?

A No.

Q You do not?

A I don't recall having sent it, no.

Q Does it bear your signature?

A Certainly. Yes.

Q Would you look at the next page which appears to be a memorandum from Mr. Weil to yourself. Do you recall

receiving that memorandum?

A Not specifically.

Q Do you recall any discussion with Mr. Weil or anyone else as a result of the stock exchange examiners' visit to Hirsch & Company and their critique as to your vulnerability with respect to capital violation?

A Yes.

Q With whom?

A Certainly Mr. Weil and probably a number of the senior partners.

Q Can you tell me the substance of those discussions?

A That it was clear that we required additional capital, andwe decided to seek it by making S.A. a subordinated lender.

Q Would you tell us what S.A. was, sir?

A Hirsch & Company's Societe Anonima. It was a Panamanian organization, and therefore Spanish.

Q Who owned the equity in Hirsch S.A.?

A The Hirsch partners individually.

Q Did the Hirsch partners contribute Hirsch S.A. equity to Hirsch & Company?

A I'm sorry, my first answer may be wrong. It may have been owned by the partnership, which makes the partners indirectly the owners.

Q If it was owned by the partnership, wasn't it already part of the capital of Hirsch & Company, and wasn't that the interest in affiliates that was restated at the end of 1969?

A It was not valued at its real value until it became a subordinated lender.

Q It was not?

A No.

Q When did it become a subordinated lender?

A In the spring of 1970.

Q How much did that better the capital position of Hirsch & Co.?

A Approximately $2,000,000.

Q Mr. Kohns, let me try tomfresh your recollection about Hirsch & Co. S.A. I have here a tax return filed by Hirsch & Co. in respect to the affiliate Hirsch & Co. S.A., which has been admitted in evidence as Haskins & Sells Exhibit Q. On this return it shows that the shareholders of Hirsch & Co. S.A. are the individual partners of Hirsch & Co. Does that accord with your recollection?

A Yes. I discussed with you my confusion on that subject.

t2b am

Q Does that clarify your confusion?

A Yes.

Q Did the partners of Hirsch & Co. who were the shareholders of Hirsch & Co. S.A. vote or determine in the spring of 1970 that Hirsch & Co. S.A. would make a subordinated loan to Hirsch & Co. to improve its capital position by $2 million?

A No, I am quite sure we didn't do anything as formal as that.

Q Whether you did something as formal as that, did you make a determination that Hirsch & Co. S.A. would make a subordinated loan to Hirsch & Co.

A Yes.

Q And was that loan made?

A Oh, yes.

Q Mr. Kohns, had you made a determination by this time that no Hirsch & Co. partner could contribute any significant additional capital to Hirsch & Co.?

A That no partner did what?

Q Was able to contribute any additiona capital to Hirsch & Co.?

A No.

Q You did not make that determination?

A No.

THE COURT: I am somewhat confused in terms of your time, Mr. Brooks.

MR. BROOKS: In the spring of 1970, sir. I am sorry, I should have fixed the time.

THE COURT: All right.

Q In the spring of 1970, didn'tyou know, sir, that there was no hope for additional capital from any present Hirsch & Co. partner?

A No.

Q You did not?

A No.

Q Let me try to refresh your recollectqon by reading from page 46 of your deposition:

"Q Were there ever inquiries put to the other Hirsch partners as to whether they would be willing to put in additional capital either in 1969 or 1970?

"THE WITNESS: Not that I recall, no.

"Q Was there discussion about that topic amongst the leaders of the firm?

"A No. I think we knew the financial position of our partners well enough not to need a discussion.

"Q From such knowledge did you know that there was not a significant source of additional capital to be obtained from the present partners?

"A Yes, I believe tha 's so."

Does that refresh your recollection, sir?

A Yes.

Q And is your recollection as refreshed the same as it was when you testified at your deposition?

A No; I failed to think of the fact that one of my partners could have contributed a very substantial amount had he and we so desired.

Q Whois that?

A Maurice Meyer, Jr.

Q Did you ever ask Mr. Meyer to do that?

A No.

Q Why not?

A Because the price would have been making him senior partner.

Q So far as the present leadership of the firm was concerned,that was not an acceptable alternative, was it?

A I was unwilling to have him senior partner.

Q And Mr. Hirsch and Mr. Mundheim agreed with you, did they not?

A I would rather have them answer for themselves.

Q Did you communicate with them on that subject?

A Yes.

Q I would rather have you tell me whether they

agreed with you.

A I really don't know. I am not sure I asked for their agreement.

Q In any event, no one asked Mr. Meyer to pitch in with some additional capital and take over the firm, did they?

A Not to the best of my knowledge.

Q Did you have the impression during the first six months of 1970 that Maurice Meyer wanted to pull out of the firm of Hirsch & Co. altogether?

A At what time?

Q In the spring of 1970, the first six months.

A No.

THE COURT: For my clarification on this, there are two Meyers?

MR. BROOKS: No, sir, only one.

Q As far as I know; that is correct, isn't it, Mr. Kohns?

THE COURT: Mr. Kohns used the junior, and that is the first time I heard it. I thought maybe it was somebody else.

THE WITNESS: Thatwas the same Meyer, your Honor.

Q Let me try to refresh your recollection, Mr. Kohns, on the question of whether Maurice Meyer had given you the impression in the first six months of 1970 that he wished

to withdraw from the firm.

MR. CAMMY: I object to the words "given you the impression".

THE COURT: I think that is an appropriate objection. Sustained.

Q Had you formed a conclusion that Maurice -- had you any reason to believe that Maurice Meyer wished to withdraw from the firm during the first six months of 1970?

A No.

Q Let me try to refresh your recollection then, sir, by reading from page 133 of your deposition.

"Q And during that first six months" which refers to the first six months of 1970 -- "had he given, meaning Mr. Meyer, given to the Hirsch partners any notice that he intended to withdraw his investment from Hirsch & Company at a time in the future?

"A Not as clearly as -- not to my knowledge, no.

"Q Or had aside from that might be the formal type of notice under the partnership agreement or otherwise, had he expressed such an intention informally to any Hirsch partner that you were aware of?

"A Not to me. I had received the impression somehow, but it wasn't directly from him to me.

"Q You had received an impression from somewhere

that Maurice Meyer intended to pull out?

"A Yes."

Does that refresh your recollection, sir?

MR. CAMHY: I renew -- excuse me, your Honor, I withdraw that.

Q Does that refresh your recollection, sir?

A No, I am afraid it doesn't.

Q Do you have any reason to believe that your testimony at your deposition was not accurate?

A I can't at the moment remember my reason for making that statement.

Q You can't recall the reason, but can you recall whether you had that view in the spring of 1970?

A I did not have view.

Q How do you know you didn't have the view?

A My memory.

Q Then why did you testify as you did at your deposition then, when you answered "yes" to my question, that you had received an impression from somewheres that Mr. Meyer intended to pull out?

MR.CAMHY: I think he should read --

THE COURT: I thought that Mr. Kohns had answered that question.

He said he didn't recall his reason for making

that statement.

MR. BROOKS: Now he told us that he did not have that impression, and I asked him how does he know he didn't have that impression, why did he answer the question in the depositon "Yes" if he now can say he did not have that impression.

A I suppose the time element of four or five years makes one's memory somewhat unclear.

Q Are you suggesting that you probably had a better recollection when you gave your deposition approximately a year ago than you do today?

A I certainly have a different recollection.

Q A different one today?

A Yes.

Q Can you tell me which is the better recollection?

A I believe today's.

MR. CAMHY: Your Honor, may I read the rest of the little bit that is here that he quoted from?

THE COURT: You may, if you feel it is necessary, at the time you get to redirect. You can raise it then.

MR. CAMHY: Thank you, your Honor.

Q Mr. Kohns, in about April of 1970, what was Mr. Meyer's total capital contribution to the firm of Hirsch & Company?

A At what time?

Q About April of 1970. When you resumed the merger discussions with duPont. Maybe May of 1970.

A Something over half a million dollars is the figure that occurs to me.

Q If Mr. Meyer had withdrawn that investment would the firm of Hirsch & Company have been in capital compliance under Stock Exchange Rule 325 at that time?

A He had no right to withdraw it.

Q I am not saying that he did, sir. I am asking you, if he had withdraw that money could the firm have complied with the Exchange's capital rule?

A It would have some effect. Just how much effect I can't tell you. I mean in terms of AI percentages.

Q Mr. Kohns, what was the amcunt of Mr. Meyer's subordinated loan in the spring of 1970?

A I don't recall.

Q What was the amount of his limited partnership investment?

A I thought it was a half million that I just mentioned.

Q Well, as I understand, in addition to the half million he would have had a subordinated loan as part of contributed capital, would he not?

A I believe hedid, yes.

Q Was the amount of the subordinated loan at least as great as the amount of his limited partnership interest?

A I believe not.

Q Not as great?

A No.

Q Do you have any idea how much the subordinated loan was?

A I would really have to guess and my guess would be about a quarter of a million dollars.

Q Mr. Kohns, the firm of Hirsch & Company had been having some record keeping problems in 1969 and '70, had it not?

A Yes.

Q Do you recall what they were? Do you recall what those problems were?

A I think your description of them was as good a one as I can give. Record keeping problems.

Q Well, have you been attending this trial throughout?

A Yes.

Q Do you recall discussions during the testimony of some of the other witnesses about a charge memorandum going to the New York Stock Exchange's Board of Governors or the Advisory Committee of the Board of Governors? Where you were talking about the duPont firm?

A A charge?

Q Charge memorandum.

A No, I don't.

Q You don't.

Are you familiar with the term "charge memorandum"?

A No, I am not.

Q Do you recall that Hirsch & Company was alleged to have violated the Stock Exchange Rule in 1969 with respect to record keeping and that this allegation was made by the Stock Exchange staff and the Stock Exchange Board of

Governors through the Board of Governors' Advisory Committee?

A No, I have no recollection.

Q We will take a look at Exhibit U, then, sir, which should be in front of you and tell me if that refreshes your recollection.

A Yes.

Q Does that refresh your recollection, sir?

A It does.

Q Tell me what your recollection is now as refreshed.

A That Mr. Bishop wrote that a staff memorandum was going to be submitted to the Advisory Committee of the Board of Governors and before doing so they would like an opportunity for comment or comments.

Q Did you comment?

A Yes.

Q Do you recall what your comment was?

A We agree with the facts as presented in the memorandum enclosed with your letter of February 7th and have nothing further we can add at this time that would prove useful.

Q Are you reading your comment?

A I am reading a letter that I wrote to the Stock Exchange, attention of Mr. Bishop.

Q Is that the last page of Exhibit U?

A Yes.

MR. BROOKS: Your Honor, I offer Exhibit U in evidence.

MR. CAMHY: Does that include the letter as well?

MR. BROOKS: It includes the whole exhibit.

MR. CAMHY: That is the first letter, the memo, and the second letter?

MR. BROOKS: Yes.

MR. CAMHY: I think the record ought to be clear because it is three different things.

Exhibit U is a letter of February 7th, 1969 to Hirsch from Bishop, and then an accompanying memorandum dated February 7, 1969 from the Stock Exchange dealing with did Hirsch buy -- did fail to execute mandatory buy in his own contracts, and then a letter dated February 17, 1969 to the Stock Exchange from Mr. Kohns. No objection.

THE COURT: All right.

xx (Defendant New York Stock Exchange Exhibit U was received in evidence.)

Q Do you recall what the penalty was for this rule violation, Mr. Kohns?

A I don't recall there was any penalty.

Q You don't. Do you recall what disposition was made?

A I believe we conformed with the rule by buying in. I don't specifically recall, no.

Q Youhave no recollection.

A No.

Q Do you recall having received an admonition from the Stock Exchange -- and I use the word "admonition" in its technical sense -- for failure to supervise one Mr. Alfred Demner, the chief margin clerk in Hirsch & Company who embezzled a sizable sum?

A Yes.

Q Do you recall the admonition being administered to the firm of Hirsch & Company by the New York Stock Exchange for that event?

A Yes.

Q Take a look at Exchange Exhibit W which should be in front of you, sir, it appears to be a letter to yourself dated November 26, 1969. Do you recall receiving that letter?

A Yes.

Q And the attached memorandum?

A Yes.

MR. BROOKS: I offer Exhibit W in evidence, your Honor.

MR. CAMHY: No objection.

xx

(Defendant New York Stock Exchange Exhibit W was received in evidence:)

Q Mr. Kohns, did you make any reply to Mr. Pincus' letter, which is Exchange Exhibit W?

A I have no recollection of making one but we certainly must have made one.

Q Would you agree with me that we have now looked at, or discussed three problems that Hirsch & Company was having in its operations and back office area during 1969?

A Yes.

Q Was this unusual for Hirsch & Company based on past experience to have problems with regulatory authorities in respect to its operations?

A No.

Q This was a new phenomenon, wasn't it?

A Yes.

Q Did these problems that were being brought to your attention about capital compliance and record keeping complaince cause you concern in late 1969 and 1970?

A Yes.

Q And that hadn't happened before, had it?

A No.

Q How old were you at the time, sir?

A In 1969?

Q Yes.

Q I was 63 for part of the year and 69 for part of the year.

Q Going back a minute to Mr. Meyer's subordinated loan, I have here a set of work papers of Mr. Gariboldi that were marked at his deposition as Haskins & Sells Exhibit 26. They appear to show that on April 20, 1970, Mr. Meyer's had subordinated securities at Hirsch & Co. under subordination agreement in the amount of $825,000, approximately (handing). Does that refresh your recollection on the amount of Mr. Meyer's subordinated loan in the spring of 1970?

A Yes.

Q Is your recollection as refreshed that that is the figure of his subordinated loan at that time, 825 some odd thousand dollars?

A Yes.

Q And that would be in addition to his approximately $500,000 limited partnership interest, would it not?

A If that was what his limited partnership was, yes.

Q Well, you testified you believed that that was what it was, didn't you?

A Yes.

Q Mr. Kohns, when Hirsch decided to seek a merger candidate how did it proceed to do that? Did it organize itself in any way and appoint one partner in charge of mergers? Exactly what did it do?

A Oh, various partners were approached by partners of other firms in informal discussions which either were formalized or were dropped. There was no committee formed, there was no formal approach to the problem.

Q Sort of ad hoc would be a fair way to describe it?

A Yes.

Q Do you recall Mr. Gariboldi testifying that he made an investigation of the Newburger firm and he made investigation of the Hentz firm; I believe he made investigation with least one other firm?

A Yes.

Q Do you recall that testimony?

A Yes.

Q Does that accord with your recollection?

A Yes.

Q Who told him to do that?

A Either Mr. Mundheim or I.

Q Well, were you acting as ad hoc merger partners or had you been given any formal authority to do that by the

other partners at this time?

A I think I did it in my capacity as managing partner.

Q Did there come a time when the partners of Hirsch & Company gathered together and more formally appointed a committee to pursue the merger?

A I am not clear on that in my own mind.

Q Don't you recall that partners gathered together and signed a document, or minutes of a meeting whereby you and Mr. Mundheim and Mr. Fraiman, were appointed a committee in charge of merger?

A That was a -- the specific duPont merger, yes.

Q Just for the duPont merger?

A That is my recollection of it, yes.

Q You do recall that event, do you not?

A Yes.

Q And the partners, at least more than 60 per cent in interest, did sign such a document, did they not?

A Yes.

MR. BROOKS: Your Honor, I think the record should reflect that such document was item 4 on the Stock Exchange trial subpoena to plaintiffs, plaintiffs' counsel has explained that they cannot locate the document at this time.

Q Mr. Kohns, did Mr. Hirsch sign that document?

A I believe so.

Q Now, we know who you are and we know who Mr. Mundheim is, but could you tell us who Mr.Fraiman was at this time when he was appointed to the merger committee?

A He was the senior floor partner on the floor of the New York Stock Exchange.

Q Do you know whether he held any office at the Stock Exchange of any kind?

A Yes, he was a governor.

Q How long had he been a governor of the Stock Exchange?

A I don't recall how long the appointments were.

Q Do you recall when this document was signed that appointed the committee?

A To the best of my recollection it was early in 1970.

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Q Mr. Kohns, have you had any discussions with Mr. Norman lately about future employment for him?

A Yes.

Q Tell me about that discussion. What did you say to him and what did he say to you?

A Well, we told him that we wanted to keep him on a consultant basis for the liquidation of Hirsch & Company under an agreed -- on an agreed upon financial terms until such time as he found himself work, at which time our agreement would cease and any time he spent and devoted to our affairs would be on a consultant fee basis.

Q What was the --

A I also --

Q Excuse me, I didn't mean to cut you off. Go ahead.

A I also discussed with him the possibility of discussing his problem with firms who specialized in what I believe is called talent scouting, and he asked me if I had any objection to his approaching Haskins & Sells in view of his knowledge that we were suing Haskins & Sells. And he said that it might be embarrassing if he was employed by Haskins & Sells during the trial, and he said he had no such intention but that they perhaps could give him some leads.

Q What was the agreed compensation that Mr. Norman

would receive during this period when he would be retained as a consultant until he got another job?

A My recollection is a hundred dollars a month, but I am not really clear on it.

MR. CAMHY: Your Honor, may I have the question--

THE WITNESS: It must have been a hundred a week not a month.

MR. CAMHY: Yes.

A A hundred a month is --

Q Doesn't sound like very much, does it?

A No.

Q You think upon reflection it is a hundred a week?

A I think so, yes.

Q Could it be any higher than a hundred a week?

A To the best of my recollection it was a hundred a week.

Q Does he perform any dutites for that compensation? Does he have to perform any duties to obtain that compensation?

A Yes.

Q What?

A Whatever we need done.

Q Do you need anything done right now? Do you have a list of tasks for him to perform?

A No.

Q Nothing for him right now?

A No.

Q Can you think of anything that you expect that you will have for him to do in the foreseeable future?

A Yes.

Q What?

A Our omnibus account has not been settled with duPont. And I think he would be useful in helping us discuss a solution.

Q Mr. Kohns, when do you first recall considering the duPont firm as a merger candidate?

A In the first quarter of 1970.

Q Can you be any more precise?

A No, I'm sorry.

Q At the time that you considered them who first raised it at the Hirsch firm?

A I think Mr. Fraiman.

Q When he raised it did he tell you anything that he knew about the duPont firm?

A No.

Q Did he tell you anything about disciplinary action that had been taken by the New York Stock Exchange against duPont which Mr.Fraiman might have known about in

his capacity as a governor of the stock exchange?

A At some time he did, but I don't believe it was that early.

Q Well, did you know about this as a result of your own knowledge without Mr. Framen telling you?

A I have some recollection that it was in the New York Times.

MR. BROOKS: I wonder if I could have from the clerk Stock Exchange Exhibits CC, DD, EE, FF and GG which are photostats of newspaper articles which appeared at about this time.

Q Mr. Kohns, let me show to you two articles which I think may be the article you are referring to. One was in the New York Times, that is Exhibit FF, and the other was in the Wall Street Journal, that's Exhibit GG, and I will represent to you that they appeared in those newspapers on February 6, 1970 (handing). See if you can tell me whether you were referring to either or both of those.

A Yes, I believe I was referring to both.

Q And they do report that a disciplinary proceeding at the New York Stock Exchange had resulted in a fine being levied on duPont and some of its principals, do they not?

A Yes.

MR. BROOKS: I offer these in evidence, your Honor.

MR. CAMHY: No objection as to what the witness saw.

(Defendant New York Stock Exchange Exhibits FF and GG received in evidence.)

xx

Q Sir, do you recall at about the time you read those newspaper articles that we have just marked reading other newspaper articles about duPont's operating loss for the 1969 year?

A There were so many newspaper articles about duPont at the time that I can't remember specifically the one you are talking about.

Q Tell me the topics that were reported in the press about the duPont firm at this time.

A Well, one of them was that they were discussing merger with Hirsch.

Q Anything else?

A I can't recall specifically.

Q Let me show you Stock Exchange Exhibits DD and EE which are articles from the Wall Street Journal and the New York Times of February 5, 1970 (handing).

I believe the day before the articles about the censure. Do you recall reading these articles that I am now showing you (handing)?

A Yes.

Q And is it fair to say that these are articles reporting on an operating loss for the duPont firm between seven and a half and eight million dollars in 1969?

A Yes.

MR. BROOKS: I offer these exhibits, your Honor.

MR. CAMEY: No objection on the same basis, your Honor.

MR. BROOKS: Exhibits DD and EE.

(Defendant New York Stock Exchange Exhibits DD and EE received in evidence.)

xx

Q Aside from reading about the fine that had been levied on the duPont firm which you had seen in the newspaper articles, do you recall getting getting directly from the New York Stock Exchange a bulletin telling you of that very fact?

A No, but I did not normally receive stock exchange bulletins.

Q Were you a member of the stock exchange?

A Oh, no.

Q By a member we mean someone who owns a seat only.

A That's what a member means and I was not a member.

Q You were not a member, were you?

A No, sir.

Q You were an allied member, were you not?

A Yes, sir.

Q Would you take a look at Exhibit BB which should be in front of you, sir?

A BB?

Q BB as in boy. Tell me if you recall receiving Exhibit BB on or about February 9, 1970, as an allied member of the stock exchange.

A Your question was do I remember receiving it?

Q Yes, sir.

A No, I don't.

Q Mr. Kohns, if you add up the amounts of the fines that are set forth in Exhibit BB, and they are set forth in the newspaper articles as well, you come up with an $110,000 total fine being levied on the duPont firm and its principals in February of 1970. In the 25 years that you had been on the street had you ever heard of a fine that large being levied on any firm and its principals by the stock exchange?

A No.

Q Do you recall whether you had started discussions with the duPont people about merger before or after the news of these fines and the duPont losses became public?

A I think it was after.

Q You started your discussions after these things

became public knowledge.

A That's my recollection.

Q Do you recall whether Framen reported anything to the duPont negotiating committee about knowledge that he had learned as a governor of the stock exchange about the duPont firm?

A No.

Q Did he give you any details about these fines, what they were about, what the problems were at duPont that caused these events?

A No.

Q Did you ask him?

A No, I don't think it was necessary.

Q Why not?

A I believe it was known.

Q Tell me what you first recall about the merger discussions with duPont.

A I personally was not present at the earliest meetings, and my first recollection except through discussions with other partners of Hirsch was at a meeting at Mr. Mundheim's home.

Q Tell me what you recall about the meeting.

A There was a group of Hirsch partners and a group of duPont partners. The duPont partners as I recall it

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included Messrs. Edmond duPont, Milton Speicher, Gough Thompson.

Q And what was said as best you recall at this meeting? Let me interrupt you a minute, sir. I don't believe we fixed the cast of characters at the meeting for Hirsch, have we?

A No.

Q Would you do that first then tell the court what was said in substance as best you recall?

A Mr. Hirsch, Mr. Mundheim, Mr. Framen and I, I am almost sure were the only Hirsch partners there.

Q Tell me what you recall having been said at that meeting as best you can.

A There was some comment as to the benefits that would accrue to such a merger. That for example duPont had a nationwide distribution of branch offices, an old reputation, and Hirsch had to offer branches in New York City and in Florida, and perhaps more specifically a longer and better standing in Europe where we had offices. There was also something flattering said about our bringing in brains.

Q Anything else?

A Yes. I believe we exchanged each other's AI verbally.

Q By that do you mean aggregate indebtedness for net capital ratio?

A Yes. And it was at that meeting that I told Mr. duPont that I understood that his firm had a standby agreement of $20,000,000 and asked him if it was true. He said, we have such an agreement, but we have used two and a half million dollars of it. And then I said, well, in the unlikely event that the remaining seventeen and a half million did not suffice your capital needs what plans have you? And his answer was, I can only say, Mr. Kohns, that I have never come back from Wilmington empty handed.

Q Mr. Kohns, did you ever ask him for any more detail on the standby capital arrangement?

A No.

Q Did you ever obtain any more detail?

A I think, but I am not sure, that I have a copy in my desk.

Q Do you recall Mr. Gariboldi's testimony on Friday where he asked Mr. Gentile about the existence of such an agreement and was told Mr. Gentile didn't know of any such agreement.

MR. CAMHY: Objection, your Honor. I don't think that was Mr. Gariboldi's testimony. I may be wrong but I think he is slightly misquoting the testimony.

THE COURT: Well, my recollection is that that's what Mr. Gariboldi said but --

MR. CAMHY: Your Honor, may I state my recollection of it?

THE COURT: Well, we may find it in the record while you are doing that and you can restate the question.

MR. CAMHY: Your Honor, I may be wrong too.

THE COURT: Well, the record is here. You find it and we will take a ten-minute recess.

(Recess)

T4a MR. CAMHY: Your Honor, the recollection I have is on page 626, lines approximately 7 through 18 which I would like to hand up to your Honor (handing).

THE COURT: I have it.

MR. CAMHY: Particularly line 13. My impression of the testimony your Honor, was that Mr. Gariboldi had seen a reference to the commitment in the questionnaire and he said that he asked how much of the commitment had been used and then Mr. Gentile said he wasn't aware of the commitment.

THE COURT: Well, I don't understand. I thought that was what -- I thought Mr. Brooks' question referred to Mr. Gariboldi's testimony that Mr. Gentile didn't know about the commitment.

MR. CAMHY: No, but he said Mr. Gariboldi asked Mr. Gentile whether there was a commitment. No, Mr. Gariboldi learned of the commitment from the questionnaire and then asked how much had been used.

THE COURT: All right. I really can't recall it but at any event state the question, Mr. Brooks, and let's proceed.

Mr.Pollack, what can I do for you?

MR. POLLACK: I believe your Honor has correctly stated exactly what happened. It occurred at two places,

one is at page 626 of the record and the other is at page 682 and 683 of the record.

THE COURT: Well, at any event we have it and Mr. Brooks can be guided by his question. I really can't recall what your question was but I thought it was consistent with what was in the record.

BY MR. BROOKS:

Q Mr. Kohns, I believe where we left off was I asked you whether you had ever obtained any more detail about the capital commitment, standby commitment that Mr. duPont told you about in that first meeting and you said you had obtained a copy. Then I asked did you recall Mr. Gariboldi's testimony here on Friday. I will read you that testimony and then ask you a question about it.

At the top of trial transcript page 626:

"Q Well, whichever the date, it was some time after March 12th. Do I understand your testimony that Mr. Gentile, in March or April of 1970, denied knowledge of the preexistence of this capital commitment?"

" Answer by Mr. Gariboldi.

"I don't think he denied it, he was unaware of it.

"Q He was unaware of it?

"A Yes.

"Q And then you reported this back to Mr. Mundheim

and Mr. Kohns?

"A Yes."

The answer goes on but I am going to leave it there. I am going to ask you, do you recall such a report from Mr. Gariboldi?

A No, sir.

Q Other than obtaining a copy of the standby capital commitment did you ever obtain any more detail about it?

A Yes.

Q When?

A In the last few weeks.

Q Did you ever obtain any detail about it before you went into your deal of July 2, 1970?

A No.

THE COURT: Excuse me. Mr. Kohns, when you say yes that you received a copy of this commitment am I to understand was that in a letter from Mr. duPont to you?

THE WITNESS: No, your Honor, it was as I -- if I have it, what I am thinking of is a legal document.

THE COURT: I see. All right. I'm sorry.

Q Mr. Kohns, did you ever seek any further detail about it?

A No.

Q Why not?

A Because I understood Mr. duPont was a gentleman and I accepted his word.

Q Did you think it would have been impolite to pursue the matter?

A I think it would have made him a liar.

Q You discussed the benefits that the group at the meeting saw accruing from the merger?

I believe you specified the distributional apparatus of the duPont firm, and their old line reputation, and the management capabilities of the Hirsch firm. Do you recall any other such benefits as having been seen by the participants in the meeting?

A At that meeting?

Q Yes.

A No, I believe I have given you the substance of my recollection of the meeting.

Q Are these factors that you have itemized sometimes called, or, were these factors in your discussions sometimes called the business fit of the two firms?

A Yes.

Q Do you recall the instruction to Mr. Gariboldi to conduct an investigation of the duPont firm?

A Not in detail. I remember--

Q Do you remember it having been given?

A -- being present when instructions were given, yes.

Q Was that following this initial meeting at Mr. Mundheim's home that we have discussed?

A Oh, I believe so, yes.

Q Why did you ask Mr. duPont about the availability of additional capital?

A What was the first word?

Q Why did you ask Mr. duPont about the availability of additional capital?

A Because of the general condition of Wall Street and the realization that a great many, if not most firms, were losing money it seemed to me a natural thought to inquire as to their standing inasmuch as they told me they were somewhat over 1,500 in their AI at that time.

Q At the time you put that question to Mr. duPont did you know that they had lost almost eight million dollars in 1969?

A I believe so, yes.

Q Did anybody foresee an end to the pattern of losses that were occurring?

MR. CAMEY: I object to the form of the question.

THE COURT: Objection sustained.

Q Did anyone make a prediction at the meeting

that the pattern of losses that had been occurring would cease?

A No.

THE COURT: Is that the meeting at Mr. Mundheim's home?

MR. BROOKS: Yes, sir.

Q Did anyone make a prediction that the pattern of losses would continue?

A No.

Q Did anyone give a prognosis about what they expected in the future from the duPont firm?

A In the near term future or the long term future?

Q The near term.

A No.

Q Sir, when was the discussions with duPont called off?

A I believe on the 24th of April.

Q Had there been anything else that occurred up to that time other than this first meeting that you can recall?

A Yes, as we have said I believe Mr. Gariboldi was sent over there.

Q Did he report back by then? Before the 24th of April?

A Yes, I believe so.

Q Anything else that occurred before the 24th of April, that you recall, with respect to the merger discussions with duPont?

A I find it difficult to place occurrences between the two series of discussion before and after the break off.

Q But that's all you can recall, or tell us --

A That's all I can recall, yes.

Q At the time of the break off there was an article in the newspaper, was there not, about the break off?

A Yes.

Q Let me show you Stock Exchange Exhibit CC and ask you if that is the article (handing)?

A Yes.

Q That article quotes you, sir. Is that an accurate quote?

A It is a phrase, part of a paragraph.

Q Is it an accurate portion of the paragraph, accurately reported?

A The words are accurate. The inference, because of the cutoff, is highly inaccurate.

Q Would you read the words that you are referring to so the court has the picture that we do?

A "Asked if Hirsch had been propelled into the talks with duPont because of the profit pinch Paul L. Kohns,

Hirsch managing partner replied, that would be a fair picture."

Q Does that quotation accurately portry the substance of what you told the reporter at the time?

A No.

Q Would you tell us accurately what you told the reporter?

A My recollection is that he asked why we were talking merger, and I said because of the condition of Wall Street I felt that there was no room for afirm of our size and that we felt that we would be in better shape if we joined a larger firm, and he said, well, do the current losses bear any part in your thinking? And I said, that would be a fair picture.

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MR.BROOKS: I offer Exhibit CC, your Honor.

MR. CAMHY: No objection.

(Defendant New York Stock Exchange Exhkbit CC was received in evidence.)

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MR. CAMHY: Your Honor, again, I may object to this. Mr. Kohns has said what he said, and what else is in that article I don't know. Now if it is offered for the truth of its content, I haven't read the whole article and I don't think a newspaper article is evidence of the truth of what it contains. And I object to it. If he wants to put it in as to what was published at the time, what the trade was told, et cetera, I have no objection.

THE COURT: I think that is the purpose of it, isn't it?

MR. BROOKS: It is, your Honor.

MR. CAMHY: All right.

MR. BROOKS: As to whatelse the witness said about this time.

Q Mr. Kohns, I call your attention to Exhibit HH which should be before you. It is a letter rather than a newspaper article. Do you recognize Exhibit HH, sir?

A Yes.

Q Can you tell us what it is?

A It was a memorandum which I dictated and had sent

in on monthly statements to all clients at the end of April, it is dated April 27th, 1970, and also to our personnel, discussing the misunderstandings or misconceptions of statements recently made in conjunction with the merger negotiations with duPont, stating that our aggregate indebtedness stands at a conservative thousand per cent of net capital which means we have twice as much capital as required by the New York Stock Exchange. Our operating loss for the first quarter of 1970 was approximately $125,000. This amount is relatively insignificant in view of the size of our capital and operation. In addition, our back office continues to be in excellent operating condition which I believe makes us one of the strongest in the industry.

MR. BROOKS: Your Honor, I offer Exhibit HH.

MR. CAMHY: No objection.

xx (Defendant New York Stock Exchange Exhibit HH was received in evidence.)

Q What was your purpose in sending out Exhibit HH, Mr. Kohns?

A To counteract what I considered a bad impression which could be derived from the newspaper article that we have just had a discussion about.

Q Take a look at the 3rd paragraph there, the sentence that says "This amount is relatively insignificant

in view of the size of our capital and operations."

I presume you were referring to the $125,000 loss in the first quarter? Is that correct?

A Yes.

Q Did you feel the same way about the approximately $975,000 loss that you had at the end of May?

A I don't think I would have called that insiginficant.

Q It was not insignificant, was it?

A No.

Q When do you recall the merger discussions with duPont becoming alive again?

A When did it become alive again?

Q Yes.

Q To the best of my recollection approximately three weeks afterwards. In other words, in the latter part of May. From the middle or the latter part of May.

THE COURT: I am sorry, Mr. Kohns, did I misunderstand your testimony? I had the impression that -- I don't know where I got it from now -- but I had the impression that that April 24th, I think itwas the 24th newspaper article that you testified that the discussions had never really broke even of course the newspaper announced it that you made these statements. Am I correct in that?

THE WITNESS: Your Honor, I believe you are incorrect.

THE COURT: All right. I thought that is what I understood you to say before.

THE WITNESS: There had been rumors around the street, and I was informed by my back offer partner that he feared the disruptive influence of such rumors on the personnel who might go out looking for other jobs fearing that their job was disappearing.

THE COURT: I see.

THE WITNESS: I realized that if the merger was going to be successful it was not going to be in a matter of a very short time and therefore we saw no operation but to break off negotiations and we actually did break them off.

THE COURT: I see.

All right, Mr. Brooks.

BY MR. BROOKS:

Q Tell me how they resumed, sir.

A One weekend I received a phone call at my home in Rye, from Mr. Framen who said he had just come off the golf course with Wally Latour and that Latour was very anxious to talk to me again about the merger, that there had been, if I am not mistaken, some new developments which would perhaps make it more interesting than it had been and could

they come over and talk to me, which they did.

Q What did they say when they came over to talk to you?

A The additional factor that was mentioned, if I am right in feeling that this was the first time it was mentioned, and I believe it was, was the bringing in of Glore, Forgan & Company which added a very important additional factor to a proposed merger because of their outstanding position in the underwriting field. Historical interest in an underwriting is a very valuable asset. And I believe theere was also mention of the fact that with three firms of the caliber under discussion should be able to have the best back office operation in Wall Street because we would be able to select the best men from each of the three firms. And there was more discussions but the effect was that we decided to resume negotiations.

Q Why is a historical position in underwriting important?

A Well, for example, if you have once been an underwriter for General Electric whenever General Electric had an underwriting you had a claim to be in it. Have I said enough to answer your question?

Q I think you have. What else do you know about Glore Forgan?

A Very little.

Q How did the merger discussions proceed after this meeting that followed the meetingof Mr. Framen and Mr. Latour on the golf course?

A Excuse me. I would like to add something to my last answer. One of the great assets that I felt would come as a result of Glore Forgan being a party to the merger was that one of their partners, Archer Albright, struck me as potentially an excellent choice for a back office manager which as we had seen from your quotations from the New York Stock Exchange criticisms of their operations was a very important -- would have been a very important factor. And Albright had a background as a partner of Kuhn, Loeb, as head of a chemical company. He was relatively young and gave the impression of being strently able. I may not have answered your question.

Q I think you did. Isn't it a fact that Mr. Petrillo told you that this merged frim would be okay provided it had good back office management?

A Precisely, and that of course is why Albright occurred to me as being -- as filling the problem that Petrillo had raised as being one of the problems.

Q Did it turn out that way?

A No.

Q Why not?

A Albright went down a rat hole and was never heard since as far as this merger was concerned.

Q He was --

A His doctor informed him to go away and I don't believe he was with the firm very long, not enough to be of any consequence at all.

Q He came in from the Glore Forgan firm, did he not?

A Yes, or from Staats which had joined Glore Forgan.

Q But not from Hirsch?

A No.

Q At this time you had formed a judgment, had you not, that the back office at duPont was a bloody mess?

A I had.

Q I believe you mentioned that before.

A Yes, I think, I had.

Q And that was a judgment that you had formed at that time, was it not?

A Yes.

MR. BROOKS: Can the clerk locate the Stock Exchange Exhibit PP in evidence? I put in my only copy of it on Friday.

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Q Mr. Kohns, I show you Stock Exchange Exhibit PP, which Mr. Gariboldi testified he received from you. Do you recall having obtained that document from Paul duPont and passing it along to Mr. Gariboldi?

A Yes.

Q The message on the front page reads "Just a few ideas in case of a crisis."

Did you read that at the time you obtained it from Mr. duPont?

A I have no recollection of it.

Q Does that descriptive term "crisis" stick in your mind at all?

A No.

Q What happened next, sir, after the meeting at your home with Mr. Latour and Mr. Framen. Where did the discussions next go?

A There were some group meetings including lawyers for both sides to iron out the basis for the merger. There were two meetings at Sheldon Stewart's office, they being at that time attorneys for duPont. There was another and larger meeting at Mr. Mundheim's home attended by much the same group of senior partners of each firm, plus lawyers for each time.

Q When you say each firm, how many firms are we

including, two or three?

A Albright was there, so he was at least one partner of -- I don't recall any other partner of Glore, Forgan being there, but it was a rather large, and there was no sitting down around the conference table. The meeting broke up into groups as different things came up, and even some groups went upstairs for discussions. I know I spent a part of the time in the garden with two of my lawyers, not getting into the argument.

Q Who were those two lawyers?

A Ed First and Jim Fuld.

Q Were those two gentlemen from the same law firm?

A No, Mr. First was a partner at Guggenheimer & Untermyer, and Mr. Fuld was a partner of Proskauer -- you name it.

Q Rose, Goetz, and Mendelson?

A Yes.

Q Who were they representing?

A Hirsch.

Q Both of them?

A Both of them. Hirsch & Company.

Q Can you tell me why you had two law firms representing Hirsch & Company? I suggest to you that the normal number is one.

A Well, one of the reasons was -- two of the reasons were Mr. Fuld represented two of my senior partners and their families, and had just been a party, at least attorney, for a relatively small stock exchange merger and, therefore, was closely familiar with some of the technical problems, and we felt it wise to have further advice and we asked the two to work together, which they did quite competently.

Q How early did they enter the negotiations in point of time?

A There again we meet the obstacle of my not remembering. I suspect it was at the beginning rather than at the renewal. I think it was at the first series of negotiations.

Q You suspect that they were participating prior to April 24th?

A That is my thought, yes.

Q Which two of your senior partners had Mr. Fuld represented?

A Mr. Hirsch and Mr. Mundheim.

Q As I understand it, on or about June 8th there was a memorandum or proposed agreement signed between yourself and Mr. Latour. Is that consistent with your understanding?

A Yes.

Q Can you recall anything else that happened prior to your signing of that memorandum of understanding?

A Yes. It must have been the result of a series of discussions the details of which escape.

Q Let me then show you Stock Exchange Exhibit H, of which you have a copy. Tell me, is that the memorandum of understanding that you referred to, and if it is does it bear your signature?

A The answer to both questions is "Yes."

Q Did you understand that upon signing Exhibit H you were committed to go ahead with the merger?

A Quite the contrary.

Q You could back out, is that what you mean?

A I don't think it was a question of backing out. This wasn't an agreement.

Q I see.

MR. BROOKS: I offer Exhibit H in evidence.

MR. CAMHY: No objection, your Honor.

(Defendant New York Stock Exchange Exhibit H received in evidence.)

Q Mr. Hirsch, do you recall instructing Mr. Weil to go over to duPont and make an assessment of the operations condition of that firm?

A I recall asking Mr. Weil to go over to duPont,

but my recollection is that that was not the purpose of my making the request.

Q What was the purpose?

A I wanted to see whether he could find a place for himself in the new organization.

Q Did he deliver a report back to you after he made that visit?

MR. CAMHY: I object to the form of the question. I don't know what he means by deliver a report. It sounds almost like something physical.

THE COURT: I don't see the basis for that objection. It is overruled.

MR. CAMHY: I just --

THE COURT: It is overruled.

A Having over the weekend read Mr. Weil's pre-trial examination, I have refreshed my recollection as to a meeting which I attended and where he did enter into a discussion in the nature of a report, yes.

Q Will you tell me what you recall with respect to Mr. Weil's report?

THE COURT: Do I understand you to say that you recall a meeting which Mr. Gariboldi attended with Mr. Weil where he made a report? Is that what you are saying? I thought the question concerned Mr. Garibaldi.

MR. BROOKS: No, the question related to Mr. Weil.

THE COURT: I'm sorry.

THE WITNESS: I don't believe I mentioned Mr. Gariboldi. But, your Honor, MR. Gariboldi was present at the conference to which I am referring.

THE COURT: I'm sorry, I thought the question was did Mr. Gariboldi make a report.

Q Will you tell us what Mr. Weil said at that meeting?

A Oh, I wouldn't attempt to try and repeat what he said. The tone of it was adverse, but the words used or the reasons I am unable to give you.

Q You recall none of the substance?

A No.

Q Except the conclusion that it was adverse?

A Yes.

Q Do you recall Mr. Weil saying that he asked Edmond duPont whether Edmond duPont would continue pouring money into the duPont firm and Edmond duPont replied that the well's got to run dry some time. Did Mr. Weil tell you that?

A No.

Q Do you recall him telling you anything like that?

A No.

Q Didn't you instruct Mr. Weil to go over there and make an assessment of the operations condition at duPont?

A Not to the best of my recollection.

Q Do you recall instructing him to go over there to make an assessment of duPoint, or anything about duPont?

A That's not my recollection, no.

Q Let me try to refresh your recollection. Reading from page 79 of your deposition:

"Q Did you ever instruct or know of any instruction from another Hirsch partner to Gariboldi to make visits to the duPont premises to aid his investigation?

"A Aside from the meeting, the one I have described?

"Q Yes.

"A No, I don't.

"Q How about Mr. Norman, was he instructed to visit duPont?

"A I don't remember that he was.

"Q How about Mr. Weil?

"A Yes. I think Mr. Weil was.

"Q Do you know who told Mr. Weil to do that?

"A I would suppose Mr. Mundheim and I together.

"Q Did you give him any particular mandate for what he should do there?

"A Not that I remember.

"Q Was that left to Mr. Weil?

"A As far as I remember, yes.

"Q Would it be fair to say his general instruction was to go over there and check out their operations area and make an evaluation with respect to possible merger?

"A My recollection is not that clear. My recollection is that he should have a look around and see what he thought of the situation. He was not an accountant.

"Q He was your operations man?

"A Yes. But he was not an accountant."

Do you recall giving those responses to those questions at your deposition?

A Yes.

Q Does that refresh your recollection of the instruction given to Mr. Weil?

A Yes, but -- it does go along with the thought of the answer I have just given you. My recollection is that the emphasis is on sending him over was what I have just said rather than for an inspection of duPont.

Q Could you have sent him over twice?

A He could have gone over twice. I don't believe I would have sent him over twice. I don't believe I did send him over twice.

Q When you did send him over did you tell him anything about sizing up the firm, making an evaluation of its condition?

A I really don't remember.

Q Your deposition testimony does not help you refresh that recollection?

A No.

Q Did you have a partner named Seymour Katzenstein?

A Did I have what?

Q A partner named Seymour Katzenstein.

A Yes.

Q What area of expertise did he have at the firm?

A His function was supervising the registered representatives and domestic branch offices.

Q Did you ever ask Seymour Katzenstein to go over to the duPont firm to look it over?

A I have no recollection at the moment that I did.

Q Do you have any knowledge of whether anybody else at Hirsch asked Seymour Katzenstein to go over to the duPont firm to look it over?

A No.

Q Did you have a partner named Gil Bach?

A Yes.

Q What area of expertise did Mr. Bach function in?

A He was in charge of the research department.

Q Did you ever ask Mr. Bach to go over to duPont?

A Oh, Mr. Bach, I'm sorry. Mr. Bach --

Q Do you wish to change your answer?

A Yes.

Q Please do so.

A Mr. Bach was in charge of our underwriting department and trading.

Q Did you ever ask Mr. Bach to go over to duPont and make an assessment of any aspect?

A I have no present recollection of so doing.

Q Do you have a recollection of asking anyone else?

A Didn't you speak of Seymour -- oh, I'm sorry.

Q I covered Mr. Katenstein first. I understood your answer was you did not recall asking him to go over.

A Yes, that's right.

Q Then I asked the same question for Mr. Bach. Is your answer the same?

A Yes.

Q Do you have a recollection of asking anyone else to go over to duPont to make an inspection or evaluation other than Mr. Gariboldi and possibly Mr. Weil?

A No.

Q Do you know whether Mr. Bach or Mr. Katzenstein

did go over to duPont prior to the merger to look around?

A No, I don't.

Q How about Mr. Fraiman? Do you know whether he ever went over?

A I don't know for a fact, no.

Q Did you ever discuss the proposed merger with duPont with Mr. Katzenstein or Mr. Bach?

A Yes.

Q Can you recall those discussions? First with Mr. Katzenstein.

A The thing I recall chiefly is giving him some of the earnings reports and balance sheets.

Q Did you ask him to do anything with the earnings reports and balance sheets?

A No. As a matter of fact, they asked me for them. They wanted to study them.

Q After you gave them the earnings reports and balance sheets, did you have any further discussions with them about duPont?

A I'm quite sure I did, yes.

Q Do you recall what those discussions were?

A No. The normal expectations, and the question as to whether they felt that they would like to join the new partnership.

Q Do you recall whether they would like to join or wouldn't like to join?

A They both did join.

Q Mr. Bach joined?

A I'm sorry. No, he didn't.

Q How about Mr. Katzenstein, did he join?

A Yes, he joined.

Q Do you recall what Mr. Bach said about the earnings report and balance sheet?

A I'm sorry.

Q Do you recall what Mr. Bach said about the earnings report and balance sheet of duPont which you gave him?

A No, I do not.

Q Do you recall Mr. Lill's testimony last week when he told us about a discussion he had with Mr. First, who was one of your lawyers, about whether or not Mr. Lill could identify short security differences that arose at the duPont firm prior to July 2nd?

A I remember Mr. Lill's testimony here, yes.

Q Were you present at that conversation?

A Not there.

Q Was it a concern of yours that somebody be able to identify short differences which arose at duPont prior to July 2nd?

A Yes.

Q Why was that a concern of yours?

A Because our agreement called for the incoming Hirsch partners to be responsible for their share of profits and losses only for the first six months that they were partners and not for previous happenings because at the end of six months we had the right to withdraw.

Q When you entered the transaction on or about July 2nd, did you understand that such identification would be possible or would not be possible?

A It never occurred to me that it would not be possible.

Q It never occurred?

A No.

Q When you went into the deal on July 2nd, Mr. Kohns, had you resolved in your own mind the questions and problems that Mr. Gariboldi had raised with you with respect to the condition of the duPont firm?

A No, I am afraid I was very stupid in that regard.

Q Tell me in what way you were stupid?

A I tended to disregard them.

Q The problems and questions that Mr. Gariboldi raised?

A Yes. I minimized them.

Q So then I take it those problems and questions

were never really resolved in your mind when you entered the deal?

A That's not quite so.

I will try to refresh your recollection, if I can. I am reading from the bottom of page 119 of your deposition, sir.

"Q Did you ever get resolved in your mind at least the outstanding questions that were raised by Mr. Gariboldi's discussion with you, such as this long and short security differences, and the things he didn't understand?

"A Not that I recall.

"Q So that as far as Paul Kohns was concerned on the day you entered the transaction, July 2nd, that these problems,whatever they meant to you, were still open or unresolved, is that correct?

"A Yes."

Does that refresh your recollection?

A I refer again to the meeting that Mr. Weil's pre-trial examination brought back to my attention, and there the mattees that we are discussing were raised in the presence of Mr. Petrillo, who, for want of a better expression, said that Mr. Garibaldi's problems were nonsense and that he was exaggerating the importance. Considering Mr. Petrillo's wide expertise and knowledge and my confidence

in his ability as senior partner of Haskins in charge of Wall Street, and his knowledge of duPont's operations as their accountant, I accepted his diagnosis of the problem rather than that of Mr. Gariboldi, who had been sent over to us by Mr. Petrillo, coming from his office.

Q If that were so, sir, why did you answer my question about resolving the problems in effect that you had not resolved them when you entered the merger?

A Because at the time I answered your question I had not seen Mr. Weil's deposition which refreshed my memory.

t5b am

Q What else did Mr. Petrillo tell you? He said Mr. Gariboldi is full of nonsense?

MR. CAMHY: May I hear the question again, please.

THE COURT: What else did Mr. Petrillo tell you. I gather now we are talking about that meeting, Mr. Brooks.

MR. BROOKS: Yes. The witness has referred to a meeting.

I am trying to get specifically what was said into the record.

Q Can you tell me specifically?

A I would not like to rely on my own memory in answering that question.

Q Do you feel your recollection about the discussion is not accurate?

A Yes.

Q Who else was present?

A I believe Messrs. Weil, Norman and Gariboldi, Mr. Petrillo. I am not sure whether or not Mr. Lill was present. I think probably Mr. Mundheim was. Who else, I don't remember.

Q What was the date of the meeting?

A I don't remember.

Q Mr. Norman testified that he became an employee of F.I. duPont Glore, Forgan. Does that coincide with your recollection?

A Yes.

Q What was his post at F.I. duPont Glore Forgan?

A Working on the problem of bringing Hirsch's affairs into the new organization. He was sort of a liaison.

Q Wasn't his job to liquidate Hirsch & Company?

A Yes, I suppose one could say that.

Q Mr. Kohns, in connection with the proposed merger, Hirsch & Company cause to be performed or cause to be prepared by Haskins & Sells a statement of Hirsch & Company's financial condition as of July 2nd?

A Yes.

Q Let me show you Exhibit J and try to locate with you Exhibit J in your group of exhibits. Is Exhibit J such a financial statement?

A What was the question?

Q Is Exhibit J the financial statement thatwe have just described that you said had been prepared by Haskins & Sells with respect to Hirsch & Company?

A Yes.

Q And it also reflects data that was generated at the time Haskins & Sells did their last audit of Hirsch &

Company as of April 26, 1970, did it not?

A Yes.

MR.BROOKS: I offer in evidence Exhibit J, your Honor.

MR. CAMHY: I question the relevancy of it, your Honor.

THE COURT: The objection is overruled.

(Defendant New York Stock Exchange Exhibit J was received in evidence.)

Q Will you open Exhibit J to the comparative statement of financial condition for April 26th and July 2nd? Incidentally, the July 2nd figures are unaudited, are they not?

A Yes, sir.

Q Would you take a look at the last item before the total on the right-hand column of figures which reads "Total capital funds and subordinated liabilities."

A Yes.

Q Do you see the $11 million figure as of April 26th, 1970?

A Yes.

Q And as of July 2, 1970,an approximate $5 million figure?

A Yes.

Q Can you explain to me what caused the decrease of that item between April 26th and July 2nd?

A I would suppose the capital of partners who did not join in the merger.

Q Does that mean that approximately $6 million of capital of the Hirsch firm elected not to join the merger?

A Yes. If that is the whole answer.

Q Well, do you know of any other part of the answer?

A No, it is the only that that I can think of.

Q Mr. Kohns, Plaintiffs' Exhibit 1 in this trial has been identified as the contract or merger agreement. I will just put that before you for your use. Do you recall anything else that has occurred prior to your signing Plaintiffs' Exhibit 1 with respect to the negotiations with the duPont people that we have not discussed so far?

A Perhaps we haven't go into detail of some of the meetings that took place.

Q Tell us of that detail?

MR. CAMHY: May I hear the question and answer, please.

(Record read.)

MR. CAMHY: I object, your Honor. It is too general, and I think too broad.

THE COURT: I am afraid, Mr. Camhy, that the

objection is overruled. Mr. Kohns understood the question, I understand it, and obviously Mr. Brooks does. You may answer.

Q What detail have we not discussed?

A A few days before this agreement was signed there was a meeting in Mr. Stewart's office -- is that his name, Stewart, the duPont lawyers?

Q You mentioned Sheldon Stewart before?

A Yes. Sheldon Stewart, which was attended by one of his partners, Mr. Speicher.

Q What occurred at the meeting?

A Itwas an attempt to tie up any loose ends that might exist.

Q Or any discovery?

A The only important one that I remember was the Revenue Properties discussion which I believe we went into on direct examination, unless you want me to repeat it.

Q I think you did mention it. Maybe we will come back to it, but let us hold that for now.

Anything else that you can recall about the discussions or the negotiations prior to signing the contract that we have not yet covered?

A No, I can't recall any further detail. It was a